

*Pegues*  
MICHAEL J. MAZURAN  
MICHAEL Z. HAYES  
LISA G. ROMNEY

LAW OFFICES  
**MAZURAN & HAYES**  
A PROFESSIONAL CORPORATION  
BRICKYARD TOWER - SUITE 250  
1245 EAST BRICKYARD ROAD  
SALT LAKE CITY, UTAH 84106

TELEPHONE (801) 484-6600  
FACSIMILE (801) 487-1688

December 13, 1995

RECEIVED

DEC 18 1995

ENGINEER DIVISION


Dave Millheim  
South Jordan City  
11175 South Redwood Road  
South Jordan, Utah 84095

Re: Drainage Easement from Gerald Anderson to Pegasus and  
Requirements Letter from U.S. Army Corps. of Engineers

Dear Dave:

Enclosed please find the above referenced documents together with a letter to the undersigned from Greg Bell dated December 12, 1995. Please review these documents carefully and let me know your views regarding the same. I also suggest that the City Engineer review the same.

Very truly yours,

  
Michael J. Mazuran

MJM\nm

Enclosure

LAW OFFICES  
**KIRTON & McCONKIE**  
A PROFESSIONAL CORPORATION  
1800 EAGLE GATE TOWER  
60 EAST SOUTH TEMPLE  
SALT LAKE CITY, UTAH 84111-1004

TELEPHONE (801) 328-3600  
TELECOPIER (801) 321-4893

**FACSIMILE TRANSMISSION SHEET**

DATE: December 12, 1995

TIME: \_\_\_\_\_  
BILLING #: 5903-2

TO: Michael J. Mazuran, Esq.

FAX #: 487-1688

FROM: Gregory S Bell, Esq.  
KIRTON & McCONKIE  
1800 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, UT 84111-1004  
(801) 328-3600

18 NUMBER OF PAGES INCLUDING COVER SHEET

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL OUR OFFICE AT  
(801) 328-3600 AS SOON AS POSSIBLE.

COMMENTS: Please see the attached letter and enclosures.

This is a confidential communication and is not to be delivered or read by any other person other than the addressee. Facsimile transmission is not intended to waive the attorney-client privilege or any other privilege. If this transmission is received by anyone other than the addressee, the recipient is requested to call Kirton & McConkie collect at (801) 328-3600, and to immediately return this document to Kirton & McConkie by United States mail.

Kirton & McConkie guarantees return postage.

LAW OFFICES OF  
**KIRTON & McCONKIE**  
A PROFESSIONAL CORPORATION  
1800 EAGLE GATE TOWER  
60 EAST SOUTH TEMPLE  
P.O. BOX 45120  
SALT LAKE CITY, UTAH 84145-0120

GREGORY S. BELL

FAX (801) 321-4893

TELEPHONE (801) 328-3800

December 12, 1995

VIA TELECOPY and REGULAR MAIL

Michael J. Mazuran, Esq.  
MAZURAN & HAYES  
1245 East Brickyard Rd., Suite 250  
Salt Lake City, UT 84106

Dear Mike:

I enclose herewith a copy of the Grant of Easement For Drainage between Gerald Anderson and the Pegasus entity relative to storm drainage. The description in Exhibit "A" which is to be the burdened parcel is the entire 34 acres which is to be granted to the city. Before recording this, it occurred to us that we ought to obtain your review and the city's consent to this. Gerald has a concern that we may be burdening, by the language of the easement, the entire 34 acres with drainage rights and that you may want to tweak this, especially in light of the language in the city's Development Agreement with Pegasus which says that the city will grant them storm drainage easements only at certain points in the 34 acres. Kindly get your comments to me or Dave Rasmussen.

I also enclose a copy of the letter of consent from the Army Corps. of Engineers. Please note that the Army Corp. requires that the wetland park be deeded to the city of South Jordan subject to a deed of restriction to ensure that the property will remain undeveloped. Again, I seek your and the city's input as to this item. Mr. Anderson wants to keep his commitments to the city, but you can see what requirements are being imposed upon him.

Very truly yours,

KIRTON & McCONKIE

  
Gregory S Bell

GSB/ab

Enclosures

cc: Dave Rasmussen, Esq.  
Billy Reid  
Gerald Anderson

## **GRANT OF EASEMENT (Drainage)**

**GERALD ANDERSON**, dba Anderson Development Co., a sole proprietorship ("Grantor"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants and conveys unto **11000 SOUTH 400 WEST, L.C.**, a Utah limited liability company, ("Grantee") its successors and assigns, a non-exclusive perpetual easement for the installation, operation, maintenance, repair and replacement of a drainage system ("**Drainage System**") on and under the surface of the real property which is more particularly described on the attached Exhibit "A" ("**Burdened Property**"), and for the benefit of the Grantee and Grantee's property described in the attached Exhibit "B" ("**Property**").

TOGETHER WITH the right of necessary access from the surface of the areas subject to such easement (the "**Easement Area**") and the right of necessary ingress and egress over adjacent portions of Grantor's land at reasonable times for the purpose of exercising the rights herein granted.

Provided:

**First**, that all installation, operation, maintenance, repair or replacement of such Drainage System shall be at no cost to Grantor and shall be so performed as to interfere as little as reasonably possible with the use and enjoyment of the Easement Area and Grantor's adjacent land, by persons occupying the same or lawfully present thereon. Grantee shall keep the Easement Area and Grantor's adjacent land, free of Grantee's and Grantee's contractors' equipment and materials at all times, except when workmen are actively working in the Easement Area, unless Grantor gives its prior written consent to do otherwise.

**Second**, if the surface of the Easement Area, Grantor's adjacent land and/or any improvements thereon shall be disturbed by such installation, operations, maintenance, repair or replacement of the Drainage System, said surface(s) and/or improvements shall be promptly restored by Grantee to their condition just prior to such disturbance.

**Third**, that there shall be no liability on Grantor or any persons occupying or lawfully present on the Easement Area for damage, if any, which may be caused by normal and reasonable use of the Easement Area for the purposes set forth herein by Grantee and Grantee's agents and contractors.

**Fourth**, that Grantee further agrees that it will permit no mechanics, materialmen's or other liens attributable to Grantee's activities thereon to stand against the Easement Area or Grantor's adjacent land which is for a period in excess of 60 days, and Grantee agrees to indemnify and hold Grantor harmless from the same.

Fifth, Grantee hereby agrees to hold harmless, defend (with counsel satisfactory to Grantor) and indemnify Grantor from and against all claims, losses, liability, costs and expenses for loss of or damage to property and for injuries to or death of any person (including, but not limited to, the property and employees of each party hereto) when arising out of or resulting from, directly or indirectly: (a) the use of the easements granted hereunder (the "Easement") by Grantee and its agents; (b) any breach or default in the performance of any obligation on Grantee's part to be performed under the terms of this Grant of Easement.

Sixth, that Grantor agrees that Grantor shall not construct any building or other structure on the Easement Area in a manner which unreasonably interferes with the intended use thereof as provided herein; provided, however, Grantor reserves the right to require, at Grantor's sole expense, the relocation of all or part of the Drainage System to the extent, from time to time, as may be necessary to permit further use or development of the Easement Area. Grantee's agreement to this relocation provision is a material consideration in Grantor agreeing to this Grant of Easement. Notwithstanding the foregoing, no relocation of the Drainage System shall unreasonably impair or interfere with the intended purpose, or any other lawful uses, of the Easement, whether by Grantee or others.

Seventh, that Grantee shall, at its expense, comply with all laws, regulations, rules and orders applicable to the Easement and the Easement Area regardless of when they become or became effective, including, without limitation, those relating to health, safety, noise, discharge, leakage, spillage, emission or pollution of any type. Should any violation of law, regulation, rule or order applicable to the Easement and/or the Easement Area occur as a result of Grantee's use, presence, operation or exercise of the rights granted hereunder, Grantee shall, at its expense, remedy such violation and clean all property affected thereby, to the reasonable satisfaction of Grantor, and to satisfy the lawful requirements of any governmental body having jurisdiction in the matter.

Eighth, that should Grantee fail to commence construction of the Drainage System (construction being defined for purposes hereof as the commencement of field work in preparation for excavation), within five (5) years from the date of recordation hereof, the rights hereby given shall cease, and Grantor shall at once have the right to assume exclusive possession of the Easement Area. In addition, if Grantee ever ceases to use the Easement Area for the easement purposes provided herein for a period in excess of two years (after commencement of construction as defined herein), the Easement shall automatically terminate.

Ninth, that Grantee, its agents and employees, subject to provisions hereof, shall have the privilege of entry on the Easement Area for the purpose of constructing, maintaining and making necessary repairs to the Drainage System. Grantee agrees to give Grantor five (5) day's written notice prior to commencement of any work on the Drainage System, except emergency repairs, in which event Grantee shall notify Grantor's authorized representative by telephone. Grantee agrees to keep the Drainage System in good and safe condition, free from waste.

Tenth, after final completion of construction of the Drainage System for all of the Property, Grantee will agree, at Grantor's request and expense, to an amendment hereto which

reduces the size of the Easement Area; but in no event to a size less than that determined by Grantee to be reasonably necessary for the purposes hereof.

Eleventh, this Agreement is not intended to alter or preclude other agreements between the parties with respect to the design, location, construction or cost of the Drainage System.

Twelfth, the parties acknowledge that other parties may request that the Drainage System be designed and constructed to accommodate storm drainage from other properties, in addition to Grantee's Property. Grantor and Grantee will each consent to such enlargement, provided that such consent(s) may be withheld until receipt of satisfactory assurance that such enlargement will not adversely affect the function and utility of their respective rights hereunder, or their respective costs hereunder.

Thirteenth, that this Agreement shall be appurtenant to the Property and shall run with the land; and that upon any future conveyances of the Property the transferee shall take the Property subject to all obligations of the transferor hereunder, and the transferor shall be released of all liability hereunder.

Fourteenth, that the covenants and obligations herein contained shall bind and inure to the benefit of successors and assigns of the parties hereto.

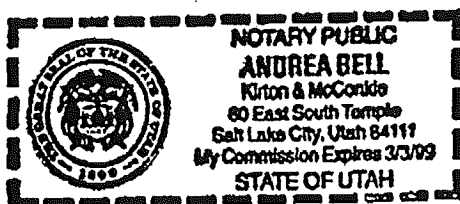
IN WITNESS WHEREOF, Grantor has executed this Grant of Easement on this \_\_\_\_ day of \_\_\_\_\_, 1995.

GRANTOR.

GERALD ANDERSON, dba Anderson Development Co., a sole proprietorship

STATE OF UTAH )  
SALT LAKE :ss.  
COUNTY OF DAVIS )

On December 8, 1995, Gerald Anderson, dba Anderson Development Co., a sole proprietorship, personally appeared before me and duly acknowledged to me that he executed the foregoing instrument in the capacity indicated.



Andrea Bell  
NOTARY PUBLIC  
Residing at: Salt Lake  
My commission expires: March 3, 1999

GRANTEE:

11000 SOUTH 400 WEST, L.C., a Utah  
limited liability company

By:

  
Sanford N. Diller, Manager

STATE OF CALIFORNIA

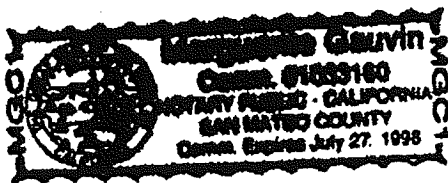
)

:ss.

COUNTY OF SAN MATEO

)

On this 30th day of NOVEMBER, 1995, personally appeared before me Sanford N. Diller, the  
signer of the within instrument, who duly acknowledged to me that he executed the same as  
Manager of 11000 South 400 West, L.C.



  
NOTARY PUBLIC

Residing at: SAN MATEO, CA

My commission expires: 7.27.98

**EXHIBIT "A"**

**(Description of Easement Area)**



**EXHIBIT "A"****PARCEL 1:**

BEGINNING at a point 1401.85 feet West and 269.38 feet South from the South Quarter Corner of Section 13, Township 3 South, Range 1 West, Salt Lake Base and Meridian; thence North 74°54' West 1773.40 feet; thence North 54°23' East 627.20 feet; thence North 59°18' East 225.34 feet; thence North 18°55' East 586.70 feet; thence South 75°01' East 1127.43 feet; thence South 11°03' West 575.433 feet; thence North 81°49'27" West 338.83 feet; thence South 389.85 feet; thence East 286.74 feet to a point on the Westerly line of the Galena Canal; thence South 7°47' West 25.03 feet; thence South 21°33' West 295.21 feet to the point of BEGINNING.

ALSO LESS AND EXCEPTING any portion of said property which lies within the bounds of the relocated Jordan River.

ALSO LESS AND EXCEPTING the following described property:

BEGINNING at a point North, 39.746 feet and East 911.23 feet from the Southwest Corner of Section 13, Township 3 South, Range 1 West, Salt Lake Base and Meridian; running thence South 03°36'28" West 214.554 feet; thence South 75°12'05" East, 147.81 feet; thence South 03°36'28" West, 19.28 feet; thence South 02°34'30" West, 392.12 feet; thence South 02°14'35" West, 235.32 feet; thence South 07°17'03" West, 291.40 feet; thence South 45°00'00" East, 44.245 feet; thence South 07°17'03" West, 60.717 feet; thence South 74.381 feet; North 89°29'00" East 130.142 feet; thence South, 30.00 feet; thence North 89°29'00" East, 598.457 feet; thence South 01°16'56" East 153.050 feet; thence North 89°59'45" East 36.87 feet; thence North 5.81 feet; thence North 89°48'53" East, 352.27 feet; thence North 05°18'15" East, 1500.984 feet; thence South 89°41'55" West, 520.00 feet; thence North 00°18'05" West, 92.119 feet; thence Northeasterly, 238.249 feet along the arc of a 500.00 foot radius curve to the right (Note: Chord bears North 13°20'57" East, 236.002 feet); thence North 27°00'00" East, 154.328 feet; thence Northerly, 316.69 feet along the arc of a 955.00 foot radius curve to the left (Note: Chord bears North 17°30'00" East, 315.241 feet); thence North 08°00'00" East, 90.188 feet; thence Northeasterly, 231.599 feet along the arc of a 400.00 foot radius curve to the right (Note: Chord bears North 24°35'13" East, 228.378 feet); thence Northwesterly, 40.00 feet along the arc of a 353.00 foot radius curve to the right (Note: Chord bears North 45°34'46" West, 39.979 feet); North 84°40'00" West, 571.197 feet; thence South 08°06'05" East, 204.829 feet; thence South 10°44'55" West, 575.43 feet; thence North 82°07'32" West, 485.319 feet; thence South 00°18'05" East, 405.734 feet to the point of BEGINNING.

# EXHIBIT "B"

## (Description of Property)

Beginning at a point North, 39.746 feet and East, 911.23 feet from the Southwest Corner of Section 13, Township 3 South, Range 1 West, Salt Lake Base and Meridian; Running thence S03°36'28"W, 214.554 feet; thence S75°12'05"E, 147.81 feet; thence S03°36'28"W, 19.28 feet; thence S02°34'30"W, 392.12 feet; thence S02°14'35"W, 235.32 feet; thence S07°17'03"W, 291.40 feet; thence S45°00'00"E, 44.245 feet; thence S07°17'03"W, 60.717 feet; thence South 74.381 feet; thence N89°29'00"E, 130.142 feet; thence South 30.00 feet; thence N89°29'00"E, 598.457 feet; thence S01°16'56"E, 153.050 feet; thence N89°59'45"E, 36.87 feet; thence North, 5.81 feet; thence 89°48'53E, 352.27 feet; thence N05°18'15"E, 1500.984 feet; thence S89°41'55"W, 520.00 feet; thence N00°18'05"W, 92.119 feet; thence Northeasterly, 238.249 feet along the arc of a 500.00 foot radius curve to the right (Note: Chord bears N13°20'57"E, 236.002 feet); thence N27°00'00"E, 154.328 feet; thence Northerly, 316.69 feet along the arc of a 955.00 foot radius curve to the left (Note: Chord bears N17°30'00"E, 315.241 feet); thence N08°00'00"E, 90.188 feet; thence Northeasterly, 231.599 feet along the arc of a 400.00 foot radius curve to the right (Note: Chord bears N24°35'13"E, 228.378 feet); thence Northwesterly 40.00 feet along the arc of a 353.00 foot radius curve to the right (Note: Chord bears N45°34'46"W, 39.979 feet); thence N84°40'00"W, 571.197 feet; thence S08°06'05"E, 204.829 feet; thence S10°44'55"W, 575.43 feet; thence N82°07'32"W, 485.319 feet; thence S00°18'05"E, 405.734 feet to the point of beginning.



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
CORPS OF ENGINEERS  
1325 J STREET  
SACRAMENTO, CALIFORNIA 95814-2922

November 29, 1995

Regulatory Branch (NW-26) 199550669

Gerald Anderson  
Anderson Development  
10977 South Pleasant Hills  
Sandy, Utah 84092

Dear Mr. Anderson:

This letter is in response to the application submitted by David Zur of AGRA Earth & Environmental on your behalf. The application is for filling approximately 31,000 square feet of isolated wetlands known as the Galena Canal, which occurs on your proposed development beginning 1,775 feet north of 11000 South, extending to the point approximately 1,400 feet south of 11000 South Street near 500 West, South Jordan, Utah. The project site, depicted on the enclosed map, is situated within Sections 13 and 24, Township 3 South, Range 1 West, Salt Lake County, Utah.

Your project has been reviewed in accordance with Section 404 of the Clean Water Act under which the U.S. Army Corps of Engineers regulates the discharge of dredged and fill material and excavation in waters of the United States including wetlands. Based on the information provided, it appears that your project would involve such discharges, as discussed above.

Nationwide Permit Number 26, described on the enclosed information sheet, has been issued which authorizes the discharge of dredged or fill material into headwaters and isolated waters. Your project would involve work in these wetlands and is authorized under this nationwide permit. Authorization is subject to the following conditions to which you have already agreed and which are necessary to minimize impact to wetland values:

1. Anderson Development will deed the proposed Wetland Park to the City of South Jordan. A deed restriction will be recorded on the Wetland Park to ensure that the property will remain undeveloped. A copy of this recorded deed restriction shall be submitted to this office prior to beginning the fill work.

2. Anderson Development will assign the Water Right for the point water discharge (noted on enclosed map) to the City of South Jordan. Documentation of this Water Right shall be submitted to this office.


3. Anderson Development will design a suitable slough feature within the Wetland Park to mitigate the 25,000 square feet of wetland that will be lost in filling the Galena Canal and a conveyance of water from the "Water Discharge" area to the Wetland Park. The water conveyance structure and the slough feature will be constructed as a wide, shallow conveyance rather than a narrow, deep ditch so as to maximize the surface area of the water. A water control gate will be installed to allow water to be held within the slough area. The slough feature will be constructed in an irregular shape so as to blend with the natural aspect of the area. Details of the mitigation design shall be submitted to and approved by this office prior to filling the wetland.

4. Anderson Development shall monitor the canal and wetland area located downstream of the project in order to ascertain whether or not these features are negatively affected by the canal relocation. A monitoring plan with this goal in mind will be developed and submitted to this office for approval. Monitoring will begin at the start of the project with baseline conditions established and results submitted to this office. Monitoring shall continue for a minimum of three years. A report shall be submitted to this office by December 31 for each year of monitoring.

The only other requirement is that the person responsible for the project must ensure that the work complies with the conditions listed on the enclosure. Failure to satisfy these conditions invalidates the authorization and may result in a violation of the Clean Water Act.

If you have any further questions, please contact Mr. Drasa Maciunas at our Utah Regulatory Office, 1403 South 600 West, Suite A, Bountiful, Utah 84010, telephone (801) 295-8380.

Sincerely,



Michael A. Schwinn  
Chief, Utah Regulatory Office

Enclosure

Copy Furnished:

David Zur, AGRA Earth & Environmental, Inc., 4137 South 500 West,  
Salt Lake City, Utah 84123

# NATIONWIDE PERMIT 26

## HEADWATERS AND ISOLATED WATERS DISCHARGES

(Section 404)

The Corps of Engineers has issued a nationwide general permit authorizing discharges of dredged or fill material into headwaters and isolated waters provided:

- a. The discharge does not cause the loss of more than 10 acres of waters of the United States.
- b. The permittee notifies the District Engineer if the discharge would cause the loss of waters of the United States greater than one acre in accordance with the "Notification" general condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands. (Also see 33 CFR 330.1(e)); and,
- c. The discharge, including all attendant features, both temporary and permanent, is part of a single and complete project.

For the purpose of this nationwide permit, the acreage of loss of waters of the United States includes the filled area plus waters of the United States that are adversely affected by flooding, excavation or drainage as a result of the project. The ten-acre increased by any mitigation plan offered by the applicant or required by the District Engineer.

**Subdivisions:** For any real estate subdivision created or subdivided after October 5, 1984, a notification pursuant to subsection b. of this nationwide permit is required for any discharge which would cause the aggregate total loss of waters of the United States for the entire subdivision to exceed one (1) acre. Any discharge in any real estate subdivision which would cause the aggregate total loss of waters of the United States in the subdivision to exceed ten (10) acres is not authorized by this nationwide permit; unless the District Engineer exempts a particular subdivision or parcel by making a written determination that: (1) The individual and cumulative adverse environmental effects would be minimal and the property owner had, after October 5, 1984, but prior to January 21, 1992, committed substantial resources in reliance on NWP 26 with regard to a subdivision, in circumstances where it would be inequitable to frustrate his investment-backed expectations, or (2) that the individual and cumulative adverse environmental effects would be minimal; high quality wetlands would not be adversely affected, and there would be an overall benefit to the aquatic environment. Once the exemption is established for a subdivision, subsequent lot development by individual property owners may proceed using NWP 26. For purposes of NWP 26, the term "real estate subdivision" shall be interpreted to include circumstances where a landowner or developer divides a tract of land into smaller parcels for the purpose of selling, conveying, transferring, leasing, or developing said parcels. This would include the entire area of a residential, commercial or other real estate subdivision, including all parcels and parts thereof.

A. GENERAL CONDITIONS. The following general conditions must be followed in order for any authorization by a nationwide permit to be valid:

1. No activity may cause more than a minimal adverse effect on navigation.
2. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
3. Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills must be permanently stabilized at the earliest practicable date.
4. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.
5. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.
6. The activity must comply with any regional conditions which may have been added by the Division Engineer (see 33 CFR 330.4(e)) and any case specific conditions added by the Corps.
7. No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status. Information on Wild and Scenic Rivers may be obtained from the National Park Service and the U.S. Forest Service.
8. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
9. In certain states, an individual state water quality certification must be obtained or waived. **IN CALIFORNIA, CERTIFICATION IS REQUIRED.** In Nevada, certification is required in Truckee and Carson River Drainages. In Utah and Colorado, certification is NOT required.
10. No activity is authorized under any nationwide permit which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or critical habitat might be affected or is in the vicinity of the project and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. Information on the location of threatened and endangered species and their critical habitat can be obtained from the U.S. Fish and Wildlife Service and National Marine Fisheries Service.

11. No activity which may affect Historic properties listed or eligible for listing, in the National Register of Historic Places is authorized, until the District Engineer has complied with the provisions of 33 CFR 325, appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places.

12. Notification:

a. Where required by the terms of the nationwide permit, the prospective permittee must notify the District Engineer as early as possible and shall not begin the activity:

(1) Until notified by the District Engineer that the activity may proceed under the nationwide permit with any special conditions imposed by the District or Division Engineer; or,

(2) If notified by the District or Division Engineer, that an individual permit is required; or,

(3) Unless 30 days have passed from the District Engineer's receipt of the notification and the prospective permittee has not received notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the nationwide permit may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5[d](2).

b. The notification must be in writing and include the following information and any required fees:

(1) Name, address and telephone number of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project, the project's purpose, direct and indirect adverse environmental effects the project would cause, and any other nationwide permits, regional general permits or individual permits used or intended to be used to authorize any part of the proposed project or any related activity;

(4) Where required by the terms of the nationwide permit, a delineation of affected special aquatic sites, including wetlands; and,

(5) A statement that the prospective permittee has contacted:

(i) The U.S. Fish and Wildlife Service/National Marine Fisheries Service regarding the presence of any Federally listed (or proposed for listing) endangered or threatened species or critical habitat in the permit area that may be affected by the

proposed project, and any available information provided by those agencies. (The prospective permittee may contact Corps District Offices for USFWS/NMFS agency contacts and lists of critical habitat);

(ii) The State Historic Preservation Office regarding the presence of any historic properties in the permit area that may be affected by the proposed project; and the available information, if any, provided by that agency.

c. The standard individual permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PDN and must include all of the information required in B (1-5), of General Condition 12.

d. In reviewing an activity under the notification procedure, the District Engineer will first determine whether the activity will result in more than minimal individual or cumulative adverse environmental effects or will be contrary to the public interest. The prospective permittee may, at his option, submit a proposed mitigation plan with the predischARGE notification to expedite the process and the District Engineer will consider any optional mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed work are minimal. The District Engineer will consider any comments from Federal and State Agencies concerning the proposed activity's compliance with the terms and conditions of the nationwide permits and the need for mitigation to reduce the project's adverse environmental effects to a minimal level. The District Engineer will, upon receipt of a notification, provide immediately (e.g. facsimile transmission, overnight mail or other expeditious manner) a copy to the appropriate offices of the Fish and Wildlife Service, State natural resource or water quality agency, EPA and, if appropriate, the National Marine Fisheries Service. With the exception of Nationwide Permit number 37, these agencies will then have five calendar days from the date and the material is transmitted, to telephone the District Engineer if they intend to provide substantive, site specific comments. If so contacted by an agency, the District Engineer will wait an additional 10 calendar days before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification. If the District Engineer determines that the activity complies with the terms and conditions of the nationwide permit and that the adverse effects are minimal, he will notify the permittee and include any conditions he deems necessary. If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then he will notify the applicant either:

(1) That the project does not qualify for authorization under the nationwide permit and instruct the applicant on the procedures to seek authorization under an individual permit; or,

(2) That project is authorized under the nationwide permit subject to the applicant's submitting mitigation proposal that would reduce the adverse effects to the minimal level. This mitigation proposal must be approved by the District Engineer prior to commencing work. If the prospective permittee elects to submit a mitigation plan, the District Engineer will expeditiously review the proposed mitigation plan, but will not commence a second 30 day notification procedure. If the net adverse effects of the project



(with the mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant informing him that the project can proceed under the terms and conditions of the nationwide permit.

e. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 30 day period will not start until the wetland delineation has been completed.

f. Factors that the District Engineer will consider when determining the acceptability of appropriate and practicable mitigation include, but are not limited to:

(1) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of overall project purposes; and,

(2) To the extent appropriate, permittees should consider mitigation banking and other forms of mitigation including contributions to wetland trust funds which contribute to the restoration, creation, replacement, enhancement, or preservation of wetlands.

Furthermore, examples of mitigation that may be appropriate and practicable include but are not limited to: reducing the size of the project; establishing buffer zones to protect aquatic resource values; and replacing the loss of aquatic resource values by creating, restoring, and enhancing similar functions and values. In addition, mitigation must address impacts and cannot be used to offset the acreage of wetland losses that would occur in order to meet the acreage limits of some of the nationwide permits (e.g. five acres of wetlands cannot be created to change a six acre loss of wetlands to a one acre loss; however, the five created acres can be used to reduce the impacts of the six acre loss).

**B. SECTION 404 ONLY CONDITIONS:** In addition to the General Conditions, the following conditions apply only to activities that involve the discharge of dredged or fill material and must be followed in order for authorization by the nationwide permits to be valid:

1. No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structures or adjacent bank stabilization.

2. No discharge of dredged or fill material may occur in areas of concentrated shellfish production, unless the discharge is directed related to a shellfish production, unless the discharge is directly related to a shellfish harvesting activity authorized by Nationwide Permit 4.

3. No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, etc.) and material discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

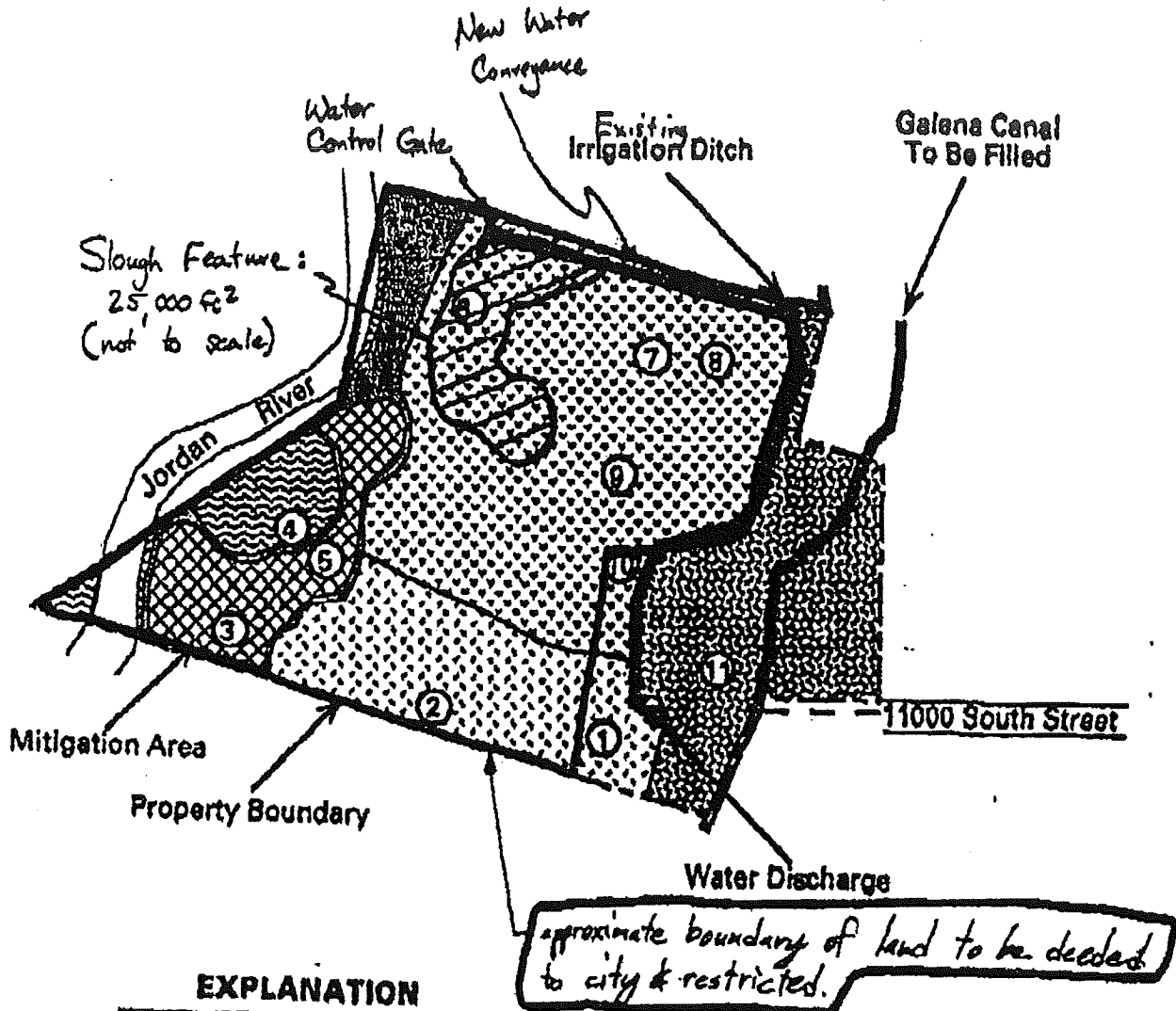
4. Discharges of dredged or fill material into waters of the United States must be minimized or avoided to the maximum extent practicable at the project site (i.e. on site), unless the District Engineer has approved a compensation mitigation plan for the specific regulated activity.

5. Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.
6. To the maximum extent practicable, discharges must not permanently restrict or impede the passage or normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).
7. If the discharge creates an impoundment of water, adverse impacts on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.
8. Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
9. Any temporary fills must be removed in their entirety and the affected areas returned to the preexisting elevation.








**C. FURTHER INFORMATION:**

1. District Engineers have the authority to determine if an activity complies with the terms and conditions of a nationwide permit.
2. Nationwide permits do not obviate the need to obtain other Federal, state, or local permits, approvals, or authorizations required by law.
3. Nationwide permits do not grant any property rights or exclusive privileges.
4. Nationwide permits do not authorize any injury to the property or rights or others.
5. Nationwide permits do not authorize interference with any existing or proposed Federal project.

ANDERSON WETLAND MITIGATION  
 AGRA JOB NO. E98-2877



### EXPLANATION

-  East Uplands (7.80 Acres)
-  West Uplands (3.0 Acres)
-  Probable Uplands (6.97 Acres)
-  Existing Wetlands (18.47 Acres)
-  Mitigation Area (3.0 Acres)
-  Riparian (2.26 Acres)
-  ① Test Pit Location

(Note Total Area Within Property Boundary Equals 41.5 Acres)

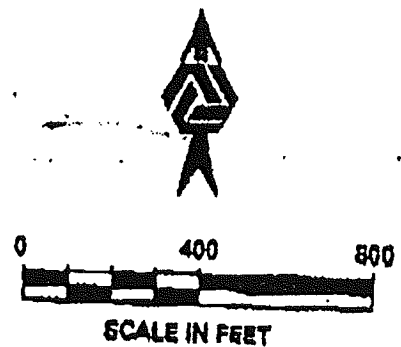


FIGURE 1  
 MITIGATION DESIGN



REFERENCE:  
 1993 SITE PLAN TITLED "FAIRBOURN PROPERTIES" BY J.F. VABOZ & ASSOCIATES PROFESSIONAL ENGINEERS



*Stirling  
Village  
File*

## First American Title Company of Utah

NATIONAL/COMMERCIAL DIVISION

338 EAST FOURTH SOUTH • SALT LAKE CITY, UTAH 84111  
PHONE (801) 536-3100 • (800) 409-5121 • FAX (801) 536-3211

### FACSIMILE TRANSMISSION COVER SHEET

Date: Nov. 28, 1995

No. of Pages: 3  
(Including Cover Sheet)

To : Kew

Company/Department: FAX 254-3393

Re : See attached letters

From: Jon E. Bartlett  
National Accounts Title Officer  
Direct Line : 536-3125  
Fax : 536-3211

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If you are not the recipient named above, you are hereby notified that any use, copying disclosure or distribution of the information transmitted with this cover sheet may be subject to legal restriction or sanction, and you are requested to call First American Title at (801) 536-3100 to arrange for the return or destruction of the information and all copies.



## *First American Title Company of Utah*

NATIONAL/COMMERCIAL DIVISION

338 EAST FOURTH SOUTH • SALT LAKE CITY, UTAH 84111  
PHONE (801) 536-3100 • (800) 409-5121 • FAX (801) 536-3211

November 28, 1995

Ken Laytham, Director  
South Jordan City  
Planning and Zoning Department  
11175 South Redwood Road  
South Jordan, Utah

RE: 11000 South 400 West L.C.  
(Apartment property on proposed Tower Blvd.)

Dear Ken,  
Enclosed with this letter is a letter written to myself to be signed by yourself as Director of the Planning and Zoning Department of South Jordan City. The letter is written to induce First American Title Company to issue an endorsement to the buyers of the above referenced property insuring that the property is a legally subdivided parcel.

Please review the attached letter and the issues surrounding said letter and property. If you are in a position to make the representations stated on the letter, please sign it on behalf of the city.

In the event that you have questions or comments concerning the above referenced matters, please contact the undersigned. As the transaction at hand is drawing to a close this week, we would appreciate your earliest assistance in this matter.

Very truly yours,

Jon E. Bartlett  
National Accounts Title Officer

cc: Jackie Safier - via fax 415-572-1238

Jon E. Bartlett,  
National Accounts Title Officer  
First American Title Company of Utah  
338 East 400 South  
Salt Lake City, Utah 84111

RE: 11000 South 400 West L.C.  
(Apartment property on proposed Tower Blvd.)

Dear Jon,

I have reviewed the issues pertaining to the above referenced property and have come to the following conclusions:

A. The property to be conveyed to 11000 South 400 West L.C. will be a legally created subdivision at such time as it is deeded to the above referenced entity, providing the attached legal description is used in said conveyance.

B. The City of South Jordan will not make requirements pertaining to the property to bring the property into compliance with the local subdivision ordinances.

I understand that the representations in this letter are made to induce First American Title Company of Utah to offer insurance coverages on the above referenced property.

Sincerely,

Ken Laytham,  
Planning and Zoning Director,  
South Jordan City.

Faxed to Jon Bartlett @ 536-3211

## Exhibit "A"

Beginning at a point North, 39.746 feet and East, 911.23 feet from the Southwest Corner of Section 13, Township 3 South, Range 1 West, Salt Lake Base and Meridian; Running thence S03°36'28"W, 214.554 feet; thence S75°12'05"E, 147.81 feet; thence S03°36'28"W, 19.28 feet; thence S02°34'30"W, 392.12 feet; thence S02°14'35"W, 235.32 feet; thence S07°17'03"W, 291.40 feet; thence S45°00'00"E, 44.245 feet; thence S07°17' 03"W, 60.717 feet; thence South, 74.381 feet; thence N89°29'00"E, 130.142 feet; thence South, 30.00 feet; thence N89°29'00"E, 598.457 feet; thence S01°16'56"E, 153.050 feet; thence N89°59'45"E, 36.87 feet; thence North 5.81 feet; thence N 89°48'53"E, 352.27 feet; thence N05°18'15"E, 1500.984 feet; thence S89°41'55"W, 520.00 feet; thence N00°18'05"W, 92.119 feet; thence Northeasterly, 238.249 feet along the arc of a 500.00 foot radius curve to the right (Note: Chord bears N13°20'57"E, 236.002 feet); thence N27°00'00"E, 154.328 feet; thence Northerly, 316.69 feet along the arc of 955.00 foot radius curve to the left (Note: Chord bears N17°30'00"E, 315.241 feet); thence N08°00'00"E, 90.188 feet; thence Northeasterly, 231.599 feet along the arc of a 400.00 foot radius curve to the right (Note: chord bears N24°35'13"E, 228.378 feet); thence Northwesterly, 40.00 feet along the arc of a 353.00 foot radius curve to the right (Note: Chord bears N45°34'46"W, 39.979 feet); thence N84°40'00"W, 571.197 feet; thence S08°06'05"E, 204.829 feet; thence S10°44'55"W, 575.43 feet; thence N82°07'32"W, 485.319 feet; thence S00°18'05"E, 405.734 feet to the point of beginning.

**First American Title Company of Utah**

NATIONAL/COMMERCIAL DIVISION  
388 EAST FOURTH SOUTH • SALT LAKE CITY, UTAH 84111  
PHONE (801) 536-3100 • (800) 409-5121 • FAX (801) 536-3211

## FACSIMILE TRANSMISSION COVER SHEET

Date: Nov 28, 1995No. of Pages: 3  
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## *First American Title Company of Utah*

NATIONAL/COMMERCIAL DIVISION

338 EAST FOURTH SOUTH • SALT LAKE CITY, UTAH 84111  
PHONE (801) 536-3100 • (800) 409-6121 • FAX (801) 536-3211

November 28, 1995

Ken Laytham, Director  
South Jordan City  
Planning and Zoning Department  
11175 South Redwood Road  
South Jordan, Utah

RE: 11000 South 400 West L.C.  
(Apartment property on proposed Tower Blvd.)

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National Accounts Title Officer

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National Accounts Title Officer  
First American Title Company of Utah  
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Salt Lake City, Utah 84111

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Sincerely,

Ken Laytham,  
Planning and Zoning Director,  
South Jordan City.

Faxed to Jon Bartlett @ 536-3211



## ECKHOFF, WATSON and PREATOR ENGINEERING

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YEARS OF  
EXCELLENCE

May 23, 1995

Dennis Larkin  
South Jordan City Community Development Director  
11175 South Redwood Road  
South Jordan, Utah 84095

Re: Sterling Village Apartment Project

Dear Dennis:

We have submitted final Phase 1 site plans for the above referenced project. These plans reflect a proposed access road serving this project. We have included in the details a cross section of the proposed Entry Road.

We hereby request a variance from the city standard 106 foot right-of-way to the 73 foot right-of-way shown within the drawing set. This request for a variance was previously requested in our February 15, 1996 letter to you. This roadway reflects elimination of the walk along the westerly right-of-way fronting this project. Most of the pedestrian circulation will be handled by the interior walks and roadways to the west. A future walk along the easterly side of the road is proposed to be constructed when the commercial site to the east develops. This Plan also eliminates the shoulders typical with the 106 foot right-of-way.

This access road will primarily serve the destination traffic to and from the commercial and Sterling Village sites. Typical street parking for this type of use would not be warranted. However an additional lane in each direction has been provided as requested by the fire department and planning commission to compensate for the single access entry to the project. This additional lane is not warranted by traffic volumes but to increase emergency vehicle access. It would also provide adequate passing clearance when bicyclist are using the outside lane. We believe the road width proposed would be more than adequate to serve the intended use.

Please make application for this variance to accommodate the proposed plan. If you have any questions or need clarification please call.

The proposed storm drainage for the Sterling Village Apartments along the North boundary has been increased to facilitate runoff from the new 400 West frontage road. Approximately 582 lineal feet of 12-inch pipe was increased to 24-inch, and 83 feet of new 24-inch pipe was required to tie the two systems together. We understand the city will cover the additional cost to upsize the system.

The proposed Phase 1 water plan will utilize two points of connection to service the site. One tie in location is at the northeast corner of the property near 11000 South. The other point is at the

### Principals

David W. Eckhoff, PhD, PE  
Kenneth W. Watson, PE, LS  
E. Gregory Thorpe, PE  
Robert L. Siegel, PhD  
James V. Olson, PE

### Associates

Frederick C. Duberow, PE  
Thomas W. Johnson, CPA  
Douglas L. Gilmore, PE  
Karen K. Nichols, PE  
Robert Q. Elder, PE  
Alane Boyd, PE  
Dee Hansen, PE

Page 2

north end of the new entry road where the city is planning to extend a new 14-inch line. If the new 14-inch line is not operable at the time building construction begins the proposed waterline from 11000 South will need to be upsized to provide adequate fire protection. We would look to the city to cover the incremental cost to upsize this line.

Please call if you have any questions. We look forward to your review and approval of this project and hope to address your concerns and comments regarding our design.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert Q. Elder", followed by a horizontal flourish line.

Robert Q. Elder, P.E.

cc: Timothy X. Toohey

go into Open Meeting. Councilman Peck seconded the motion. The vote was unanimous in favor.

Mayor Hutchings expressed appreciation to Staff, Council, Developer, and everyone who has worked towards this moment. At this time, Mayor Hutchings signed the Development Agreement with Anderson Development. Mayor Hutchings noted this was a monumental step for the City of South Jordan. Economic Development was a long time coming and this document will bless this City from November 28, 1995 on, and now the document is signed.

### III. ACTION ITEMS

- A.     CONDITIONAL USE APPLICATION   Multi-Unit Residential Development, Generally Located at 400 West 11000 South Street, C-FF Zoning District, 54.47 Acres. (Sunset Ridge Development Co., Inc.)**

City Administrator Millheim said the item was a conditional use permit for an 880 unit multi family residential project within the C-FF zone. It has been through Planning Commission, and the Planning Commission has given unanimous approval (4-0 vote, one member was absent). The Planning Commission put a number of conditions of approval on the conditional use permit. Staff is recommending approval of the conditional use permit. One of the conditions is the successful signature of a specific development agreement for the apartment project. Once the development agreement is approved and Council authorizes the Mayor to sign it (which is Staffs recommendation), then the apartment development agreement has to be put to bed. Time pressures still exist and there are approximately 15 real estate transactions pending the Councils decision.

Mayor Hutchings asked the Council if they had any concerns regarding the Conditional Use Application? Councilwoman Newbold noted on number 11, to clarify the wording, she wanted to add, as required, by the City throughout the phasing of the project.

Councilman Peck made a motion. I move that the City Council of South Jordan City grant issuance of a conditional use permit for the multi-residential unit planned unit development, to be located on real property within South Jordan City, which is more particularly described in Exhibit "A" attached to this Motion and by this reference made a part hereof. This Motion for approval is based upon and subject to the following findings and conditions:

1. The South Jordan City Planning Commission has heretofore recommended issuance of the conditional use permit subject to specific conditions contained in the Planning Commission's recommendation of November 20, 1995.

South Jordan City  
City Council  
November 28, 1995

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2. The application for the conditional use permit submitted by 11000 South 400 West, a California limited partnership, appears to be in conformity with the requirements of the City Zoning Ordinance and the City's General Plan.

3. Developer shall enter into and execute a satisfactory written Development Agreement with the City for the Project and shall comply with the terms and conditions contained in such agreement.

4. Approval by the South Jordan City Council of a preliminary master site plan for the entire Project and a Final Site Plan (after recommendation by the Planning Commission), for each phase of the Project prior to construction of each such phase.

5. Developer shall comply with all requirements of the Salt Lake County Sewerage Improvement District No. 1, Salt Lake County Flood Control, any other governmental entities having jurisdiction over the Project.

6. Developer shall comply with all applicable ordinances, rules, policies, regulations of South Jordan City in constructing and maintaining the Project.

7. The conditional use permit shall be issued to and vested in 11000 South 400 West, L.C., a Utah limited liability company, a majority of the equity of which must be owned by Sanford Diller, Pegasus Development Company and/or Sanford N. Diller and Helen P. Diller as Trustees of D.N.S. Trust.

8. Developer shall have closed on its purchase of the property for the Project and hold fee title thereto on or before November 30, 1995.

9. Developer shall commence construction of the first phase of the Project on or before May 1, 1996.

10. Not more than a total of 880 multi-residential units shall be constructed within the entire project. Developer may elect to construct a lesser number of units as determined by the Developer.

11. Developer shall provide satisfactory buffering between the Project and the single family residential areas as required by the City throughout the phasing of the Project.

12. Gerald Anderson d/b/a Anderson Development Company donating to the City 34 acres of open space area in the Jordan River bottom in a manner acceptable to the City and free and clear of encumbrances thereon.

South Jordan City  
City Council  
November 28, 1995

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Councilman Hofhines seconded the motion. The vote was unanimous in favor.

City Administrator Millheim said the next related item is Condition 3, the completion of the satisfactory Development Agreement which the Council has received. There are still a few areas that caused the Council some concern. The first one is on Exhibit E, City Fees--on the two and four inch water connection fee, Council felt the language should read, As Per Water Conservancy District Fee Schedule.

The second item is on page six, paragraph 9, Recreational Facilities, the Council asked about tennis courts. Tennis courts were not referenced, is not on the conceptual plan, but Council felt the inclusion of tennis courts had been discussed. Councilman Peck said the original conceptual drawing showed tennis courts and the apartments in California (Mansion Grove) that South Jordan is being patterned after, had them. With the number of residents in that area it is an amenity that would appear to be almost a must.

Billy Reed, Pegasus Development, said the previous land plan that Councilman Peck was referring to was a very preliminary plan and did not take into consideration the grade differential along the site, which is making it difficult. The Developers may still want to put in tennis courts, but feel it should be driven by the market.

Councilman Carlile questioned if the Developers wanted to put the tennis courts in later, where would they go? Billy Reed said as the market calls for tennis courts, it would need to be worked into the land plan. Developers would go to Planners for their expertise to make sure the site would be rearranged to accommodate the courts. Councilman Peck believes there are a lot of athletic people in Utah, especially the crowd that will be drawn to these apartments--but doesn't believe this should be a deal breaker.

Councilman Christensen said he can see the yuppie crowd desiring to access the wetland park and the City will have a need to develop that entire area. The Council is having difficulty that in the beginning they were told the impact fees would not be an issue and now is having a hard time considering waiving the park fees. These fees would help develop this specific park area. In the spirit of compromise and knowing there is a deadline, Councilman Christensen would have difficulty going beyond the 20% discount. Councilman Peck felt we should hold off on the tennis court issue right now. Councilwoman Newbold didn't have a problem with not including the tennis courts, but thinks it has a bearing on the Park fees. Councilman Carlile believed if a lot of the apartment residents play tennis, and there were not courts there, it would have an

South Jordan City  
City Council  
November 28, 1995

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impact on South Jordan Parks.

City Administrator Millheim continued that the real issue that the Council is still apart on is the payment of the Park fees. Council has received a proposal, as outlined in the agreement, that would call for a waiving of the Phase I Park Improvement Fees, payment of the fees at the issuance of building permit in Phase II and Phase III of the project and a guarantee on the part of the Developer that if they do not build what the agreement calls for, that there is a lien on the property for the payment of the Phase I fees.

Billy Reed, Pegasus Developer, explained that at the time fees were initially discussed and agreed to, there was also an SID proposed. The Developer has always had a problem with the Park Fees, believing it to be too high especially in comparison to the adjacent cities. Gerald Anderson, working through the SID, had committed to the adjacent property owners who would be impacted by the SID, that the apartment developers would pay fees on the first 300 units and as those fees were paid it would help pay the SID--in turn alleviating the property owners of an out of pocket payment. Through these fees and sales tax the full SID assessments would be paid without ever impacting the property owners. The Apartment Developers were never in full agreement on that part, however, decided to table that issue as long as the SID was the funding mechanism. Now that the SID is not the mechanism, they have come back with their disagreement with the Park Fees. If you go back to any of the Development Agreements proposed, the Developers have always held the Park Fee issue in obedience. They are just not convinced that \$700/unit is the right number. If they are going to build at exactly what the fees are for the City, Mr. Reed has a form from the City showing what somebody would be paying for a 2" or 4" water meter. It is the Developers reading that they would be paying \$1,750, the City is paying more then the Conservancy and if only charging that amount then the City is losing money. He wondered if the City is trying to balance it out and get more money out of other fees.

Councilman Hofhines asked that City Administrator Millheim comment on the 2" water line. City Administrator Millheim felt the implications are that this project will require a lot of 2" water connections, through the negotiations the City has agreed that no one will make money on that. The current fee schedule does not address 2" and 4" water connections. The City is in the process of an impact fee schedule, but that will not be adopted until after all these fees are agreed to (by this agreement).

Councilwoman Newbold stated that South Jordan does not just see Parks as recreation, it sees them as a vital means of preserving open space. The open space and Parks are done collectively, and taken care of out of these fees. Exceptions are not allowed for



South Jordan City  
City Council  
November 28, 1995

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the installation of facilities that are part of individual projects.

Councilman Hofhines wanted to relay to Mr. Reed that the City Council would prefer 100% of the Park fees be paid. He believes the Council may come to a compromise of a 20% reduction. Councilman Hofhines then made a motion to take a ten minute recess so Mr. Reed would have an opportunity to consider this. Councilman Peck seconded the motion. The vote was unanimous in favor.

The Council resumed the meeting. Mayor Hutchings noted the meeting stopped at a critical point. City Administrator Millheim questioned Mr. Reed if he had a position he wanted to discuss. Mr. Reed stated their position has clearly been, what equates to a 34% decrease (compared to the Cities 20% decrease). Mr. Reed is a little baffled as to how firm the 20% number is compared to the 34%, and is there something that we can do to come to some sort of agreement? Councilman Peck suggested splitting the difference. Or, Councilman Carlile suggested putting the dollar difference in an escrow fund to later help build the tennis courts.

City Administrator Millheim added that the cost differential between the 20% and 34% was \$86,000. He made a suggestion, instead of making it complicated, to just split the difference (27%).

Councilman Hofhines made a motion to approve the Development Agreement between South Jordan City and 11000 South 400 West, L.C., a Utah limited liability company with the following changes: On Page 9 (under 8 b. Park Fees) it should read--the Project will be deferred and partially waived as follows: (i) the Phase I parks improvement fee will be deferred until Phase II; (ii) the Phase II and Phase III park improvement fees will be paid at the rate set forth in the attached Exhibit "E" as and when otherwise required hereunder; (iii) 27% of the entire park fee will be credited towards the Phase I park improvement fees.

Councilman Carlile questioned, to make it easier, the figure in Exhibit E could be changed. City Administrator Millheim said there would be a problem in the front end, so he feels doing it Councilman Hofhines way is more consensus building to what we are trying to solve.

Councilman Hofhines noted the rest of it still stays in place. What we are really changing is--we are deleting waived (not waiving any fees) and putting it due in Phase II, instead of Phase III. We are, in turn, giving them credit towards 27% of the entire Park fee for Phase I. City Administrator Millheim said we needed to get clean language that all parties agree to. Councilman Peck thought if City Attorney Mazuran could get the proper language from Councilman Hofhines motion, he would second it. City Attorney

South Jordan City  
City Council  
November 28, 1995

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Mazuran suggested that he, City Administrator Millheim, Councilman Hofhines and the Developer go in the back, draft language and come back.

Councilman Hofhines made a motion to take a five minute recess. Councilman Carlile seconded the motion. The vote was unanimous in favor.

Council returned after the recess and Councilman Hofhines restated his motion. The motion is to approve the Development Agreement between South Jordan City and 11000 South 400 West, L.C. a Utah limited liability company--the draft form has been presented to Council with these two changes:

1. A change to paragraph 8 b. (on page 9) will read--the Project will be deferred and reduced as follows: (i) the Phase I parks improvement fee will be deferred entirely until Phase II; (ii) the Phase II and Phase III parks improvement fees will be paid at the rate set forth in the attached schedule E as and when otherwise required hereunder; (iii) the Phase I parks improvement fee will be due when the Phase II parks improvement fee is due, but Developer will be credited with a deemed payment of \$166,320; and (iv) if all building permits for units in this Project are not applied for and issued not later than nine and one-half (9 1/2) years after the date of this Agreement, then the Phase I fee credit of \$166,320 will be due and payable in full within thirty (30) days after written demand from the City, and the City shall have a lien against the Project for such payment.
2. On page 23 a change in the Water Connection Fee. 2 Inch Connection will read As Per Water Conservancy District Fee Schedule; 4 Inch Connection will read As Per Water Conservancy District Fee Schedule (reference to footnote 3 on both of those).

City Administrator Millheim suggested that the motion include authorizing the Mayor to sign the Development Agreement, subject to the Developer signing it. Councilman Hofhines included that in his motion. Councilman Carlile seconded the motion. The vote was unanimous in favor. Councilwoman Newbold voted reluctantly because she feels the park fee is not out of line, she believes if you are creating a bigger impact on the City you should help share the cost. City Administrator Millheim clarified it was a 5-0 vote with reservations from Councilwoman Newbold.

Councilman Hofhines wanted to express gratitude for the work the Staff and City Attorney has done. Councilman Hofhines said as the future unfolds and the project is built, the City can thank the

South Jordan City  
City Council  
November 28, 1995

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Staff and City Attorney for a lot of the success--Council concurred.

---

#### **VI. OTHER BUSINESS**

None.

Councilman Carlile made a motion to go into Closed Meeting for purposes of discussion on Potential Litigation and Personnel. Councilman Peck seconded the motion. The vote was unanimous in favor.

#### **VII. CLOSED MEETING**

##### **A. PERSONNEL**

The City Council discussed setting a date for the performance evaluation of the City Administrator, which will be December 5, 1995. Council next discussed the Salary Survey Project and the related resolutions.

##### **B. POTENTIAL LITIGATION**

City Attorney Mazuran updated the City Council on the Trans Jordan Landfill disconnection suit.

Councilman Hofhines made a motion to come out of Closed Meeting. Councilman Peck seconded the motion. The vote was unanimous in favor.

Councilman Hofhines made a motion that City Administrator Millheim prepare and notice resolutions that would deal with the philosophy/methodology for review of full time employees and one that would deal with the adopting of new salary ranges for Department Heads and exempt full time employees. Also, a resolution adopting a salary schedule transition plan. Councilman Peck seconded the motion. The vote was unanimous in favor.

Councilman Hofhines made a motion that Council instruct City Administrator Millheim to prepare an employment agreement for the Building Director. Councilman Peck seconded the motion. The vote was unanimous in favor.

Councilman Hofhines made a motion that Council do a performance evaluation on City Administrator Millheim, one week from today. Councilman Peck seconded the motion. The vote was unanimous in favor. Mayor Hutchings requested that Council submit their forms to him by Monday morning. Councilman Peck submitted his to the Mayor, noting he would not be in attendance at next weeks meeting.

South Jordan City  
City Council  
November 28, 1995

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go into Open Meeting. Councilman Peck seconded the motion. The vote was unanimous in favor.

Mayor Hutchings expressed appreciation to Staff, Council, Developer, and everyone who has worked towards this moment. At this time, Mayor Hutchings signed the Development Agreement with Anderson Development. Mayor Hutchings noted this was a monumental step for the City of South Jordan. Economic Development was a long time coming and this document will bless this City from November 28, 1995 on, and now the document is signed.

### III. ACTION ITEMS

**A. CONDITIONAL USE APPLICATION Multi-Unit Residential Development, Generally Located at 400 West 11000 South Street, C-FF Zoning District, 54.47 Acres. (Sunset Ridge Development Co., Inc.)**

City Administrator Millheim said the item was a conditional use permit for an 880 unit multi family residential project within the C-FF zone. It has been through Planning Commission, and the Planning Commission has given unanimous approval (4-0 vote, one member was absent). The Planning Commission put a number of conditions of approval on the conditional use permit. Staff is recommending approval of the conditional use permit. One of the conditions is the successful signature of a specific development agreement for the apartment project. Once the development agreement is approved and Council authorizes the Mayor to sign it (which is Staffs recommendation), then the apartment development agreement has to be put to bed. Time pressures still exist and there are approximately 15 real estate transactions pending the Councils decision.

Mayor Hutchings asked the Council if they had any concerns regarding the Conditional Use Application? Councilwoman Newbold noted on number 11, to clarify the wording, she wanted to add, as required, by the City throughout the phasing of the project.

Councilman Peck made a motion. I move that the City Council of South Jordan City grant issuance of a conditional use permit for the multi-residential unit planned unit development, to be located on real property within South Jordan City, which is more particularly described in Exhibit "A" attached to this Motion and by this reference made a part hereof. This Motion for approval is based upon and subject to the following findings and conditions:

1. The South Jordan City Planning Commission has heretofore recommended issuance of the conditional use permit subject to specific conditions contained in the Planning Commission's recommendation of November 20, 1995.

South Jordan City  
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2. The application for the conditional use permit submitted by 11000 South 400 West, a California limited partnership, appears to be in conformity with the requirements of the City Zoning Ordinance and the City's General Plan.

3. Developer shall enter into and execute a satisfactory written Development Agreement with the City for the Project and shall comply with the terms and conditions contained in such agreement.

4. Approval by the South Jordan City Council of a preliminary master site plan for the entire Project and a Final Site Plan (after recommendation by the Planning Commission), for each phase of the Project prior to construction of each such phase.

5. Developer shall comply with all requirements of the Salt Lake County Sewerage Improvement District No. 1, Salt Lake County Flood Control, any other governmental entities having jurisdiction over the Project.

6. Developer shall comply with all applicable ordinances, rules, policies, regulations of South Jordan City in constructing and maintaining the Project.

7. The conditional use permit shall be issued to and vested in 11000 South 400 West, L.C., a Utah limited liability company, a majority of the equity of which must be owned by Sanford Diller, Pegasus Development Company and/or Sanford N. Diller and Helen P. Diller as Trustees of D.N.S. Trust.

8. Developer shall have closed on its purchase of the property for the Project and hold fee title thereto on or before November 30, 1995.

9. Developer shall commence construction of the first phase of the Project on or before May 1, 1996.

10. Not more than a total of 880 multi-residential units shall be constructed within the entire project. Developer may elect to construct a lesser number of units as determined by the Developer.

11. Developer shall provide satisfactory buffering between the Project and the single family residential areas as required by the City throughout the phasing of the Project.

12. Gerald Anderson d/b/a Anderson Development Company donating to the City 34 acres of open space area in the Jordan River bottom in a manner acceptable to the City and free and clear of encumbrances thereon.

South Jordan City  
City Council  
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Councilman Hofhines seconded the motion. The vote was unanimous in favor.

City Administrator Millheim said the next related item is Condition 3, the completion of the satisfactory Development Agreement which the Council has received. There are still a few areas that caused the Council some concern. The first one is on Exhibit E, City Fees--on the two and four inch water connection fee, Council felt the language should read, As Per Water Conservancy District Fee Schedule.

The second item is on page six, paragraph 9, Recreational Facilities, the Council asked about tennis courts. Tennis courts were not referenced, is not on the conceptual plan, but Council felt the inclusion of tennis courts had been discussed. Councilman Peck said the original conceptual drawing showed tennis courts and the apartments in California (Mansion Grove) that South Jordan is being patterned after, had them. With the number of residents in that area it is an amenity that would appear to be almost a must.

Billy Reed, Pegasus Development, said the previous land plan that Councilman Peck was referring to was a very preliminary plan and did not take into consideration the grade differential along the site, which is making it difficult. The Developers may still want to put in tennis courts, but feel it should be driven by the market.

Councilman Carlile questioned if the Developers wanted to put the tennis courts in later, where would they go? Billy Reed said as the market calls for tennis courts, it would need to be worked into the land plan. Developers would go to Planners for their expertise to make sure the site would be rearranged to accommodate the courts. Councilman Peck believes there are a lot of athletic people in Utah, especially the crowd that will be drawn to these apartments--but doesn't believe this should be a deal breaker.

Councilman Christensen said he can see the yuppie crowd desiring to access the wetland park and the City will have a need to develop that entire area. The Council is having difficulty that in the beginning they were told the impact fees would not be an issue and now is having a hard time considering waiving the park fees. These fees would help develop this specific park area. In the spirit of compromise and knowing there is a deadline, Councilman Christensen would have difficulty going beyond the 20% discount. Councilman Peck felt we should hold off on the tennis court issue right now. Councilwoman Newbold didn't have a problem with not including the tennis courts, but thinks it has a bearing on the Park fees. Councilman Carlile believed if a lot of the apartment residents play tennis, and there were not courts there, it would have an

South Jordan City  
City Council  
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impact on South Jordan Parks.

City Administrator Millheim continued that the real issue that the Council is still apart on is the payment of the Park fees. Council has received a proposal, as outlined in the agreement, that would call for a waiving of the Phase I Park Improvement Fees, payment of the fees at the issuance of building permit in Phase II and Phase III of the project and a guarantee on the part of the Developer that if they do not build what the agreement calls for, that there is a lien on the property for the payment of the Phase I fees.

Billy Reed, Pegasus Developer, explained that at the time fees were initially discussed and agreed to, there was also an SID proposed. The Developer has always had a problem with the Park Fees, believing it to be too high especially in comparison to the adjacent cities. Gerald Anderson, working through the SID, had committed to the adjacent property owners who would be impacted by the SID, that the apartment developers would pay fees on the first 300 units and as those fees were paid it would help pay the SID--in turn alleviating the property owners of an out of pocket payment. Through these fees and sales tax the full SID assessments would be paid without ever impacting the property owners. The Apartment Developers were never in full agreement on that part, however, decided to table that issue as long as the SID was the funding mechanism. Now that the SID is not the mechanism, they have come back with their disagreement with the Park Fees. If you go back to any of the Development Agreements proposed, the Developers have always held the Park Fee issue in obedience. They are just not convinced that \$700/unit is the right number. If they are going to build at exactly what the fees are for the City, Mr. Reed has a form from the City showing what somebody would be paying for a 2" or 4" water meter. It is the Developers reading that they would be paying \$1,750, the City is paying more then the Conservancy and if only charging that amount then the City is losing money. He wondered if the City is trying to balance it out and get more money out of other fees.

Councilman Hofhines asked that City Administrator Millheim comment on the 2" water line. City Administrator Millheim felt the implications are that this project will require a lot of 2" water connections, through the negotiations the City has agreed that no one will make money on that. The current fee schedule does not address 2" and 4" water connections. The City is in the process of an impact fee schedule, but that will not be adopted until after all these fees are agreed to (by this agreement).

Councilwoman Newbold stated that South Jordan does not just see Parks as recreation, it sees them as a vital means of preserving open space. The open space and Parks are done collectively, and taken care of out of these fees. Exceptions are not allowed for

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the installation of facilities that are part of individual projects.

Councilman Hofhines wanted to relay to Mr. Reed that the City Council would prefer 100% of the Park fees be paid. He believes the Council may come to a compromise of a 20% reduction. Councilman Hofhines then made a motion to take a ten minute recess so Mr. Reed would have an opportunity to consider this. Councilman Peck seconded the motion. The vote was unanimous in favor.

The Council resumed the meeting. Mayor Hutchings noted the meeting stopped at a critical point. City Administrator Millheim questioned Mr. Reed if he had a position he wanted to discuss. Mr. Reed stated their position has clearly been, what equates to a 34% decrease (compared to the Cities 20% decrease). Mr. Reed is a little baffled as to how firm the 20% number is compared to the 34%, and is there something that we can do to come to some sort of agreement? Councilman Peck suggested splitting the difference. Or, Councilman Carlile suggested putting the dollar difference in an escrow fund to later help build the tennis courts.

City Administrator Millheim added that the cost differential between the 20% and 34% was \$86,000. He made a suggestion, instead of making it complicated, to just split the difference (27%).

Councilman Hofhines made a motion to approve the Development Agreement between South Jordan City and 11000 South 400 West, L.C., a Utah limited liability company with the following changes: On Page 9 (under 8 b. Park Fees) it should read--the Project will be deferred and partially waived as follows: (i) the Phase I parks improvement fee will be deferred until Phase II; (ii) the Phase II and Phase III park improvement fees will be paid at the rate set forth in the attached Exhibit "E" as and when otherwise required hereunder; (iii) 27% of the entire park fee will be credited towards the Phase I park improvement fees.

Councilman Carlile questioned, to make it easier, the figure in Exhibit E could be changed. City Administrator Millheim said there would be a problem in the front end, so he feels doing it Councilman Hofhines way is more consensus building to what we are trying to solve.

Councilman Hofhines noted the rest of it still stays in place. What we are really changing is--we are deleting waived (not waiving any fees) and putting it due in Phase II, instead of Phase III. We are, in turn, giving them credit towards 27% of the entire Park fee for Phase I. City Administrator Millheim said we needed to get clean language that all parties agree to. Councilman Peck thought if City Attorney Mazuran could get the proper language from Councilman Hofhines motion, he would second it. City Attorney



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Mazuran suggested that he, City Administrator Millheim, Councilman Hofhines and the Developer go in the back, draft language and come back.

Councilman Hofhines made a motion to take a five minute recess. Councilman Carlile seconded the motion. The vote was unanimous in favor.

Council returned after the recess and Councilman Hofhines restated his motion. The motion is to approve the Development Agreement between South Jordan City and 11000 South 400 West, L.C. a Utah limited liability company--the draft form has been presented to Council with these two changes:

1. A change to paragraph 8 b. (on page 9) will read--the Project will be deferred and reduced as follows: (i) the Phase I parks improvement fee will be deferred entirely until Phase II; (ii) the Phase II and Phase III parks improvement fees will be paid at the rate set forth in the attached schedule E as and when otherwise required hereunder; (iii) the Phase I parks improvement fee will be due when the Phase II parks improvement fee is due, but Developer will be credited with a deemed payment of \$166,320; and (iv) if all building permits for units in this Project are not applied for and issued not later than nine and one-half (9 1/2) years after the date of this Agreement, then the Phase I fee credit of \$166,320 will be due and payable in full within thirty (30) days after written demand from the City, and the City shall have a lien against the Project for such payment.
2. On page 23 a change in the Water Connection Fee. 2 Inch Connection will read As Per Water Conservancy District Fee Schedule; 4 Inch Connection will read As Per Water Conservancy District Fee Schedule (reference to footnote 3 on both of those).

City Administrator Millheim suggested that the motion include authorizing the Mayor to sign the Development Agreement, subject to the Developer signing it. Councilman Hofhines included that in his motion. Councilman Carlile seconded the motion. The vote was unanimous in favor. Councilwoman Newbold voted reluctantly because she feels the park fee is not out of line, she believes if you are creating a bigger impact on the City you should help share the cost. City Administrator Millheim clarified it was a 5-0 vote with reservations from Councilwoman Newbold.

Councilman Hofhines wanted to express gratitude for the work the Staff and City Attorney has done. Councilman Hofhines said as the future unfolds and the project is built, the City can thank the

South Jordan City  
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Staff and City Attorney for a lot of the success--Council concurred.

## **VI. OTHER BUSINESS**

None.

Councilman Carlile made a motion to go into Closed Meeting for purposes of discussion on Potential Litigation and Personnel. Councilman Peck seconded the motion. The vote was unanimous in favor.

## **VII. CLOSED MEETING**

### **A. PERSONNEL**

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Guzzardo and  
Associates, Inc.

836 Montgomery  
San Francisco  
California 94133

Telephone  
415-433-4672  
Facsimile  
415-433-5003

Principals  
Dale K. Ikeda  
Paul T. Lettieri  
Gary D. Laymon

Associates  
Janet C. Hittle  
Randall J. Montbriand  
Jeffrey S. George



Land Planners and  
Landscape Architects

*File Pegasus*

T R A N S M I T T A L

To: CITY OF SOUTH JORDAN Job: STERLING VILLAGE  
11175 SOUTH REDWOOD RD.  
SOUTH JORDAN, UT 84095

Attn: JODY KETTESSEN Sent Via: FED EX  
PRIORITY

☒ Attached ☐ Originals ☐ Reproducibles ☐ Submittals ☐ Other  
☐ Separate Cover ☐ Prints ☐ Correspondence ☐ Specifications

Copies	Dated	Description
1	3/5/96	DIAGNOSTIC PED. CIRC. PLAN.

☒ At your Request ☐ For your Information ☒ For your Use ☐ For Review & Comment  
☐ With Comments Noted ☐ Reviewed as Noted ☐ For your Approval

Remarks:

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By: Dale K. Ikeda Date: 20 MAR '96  
cc: Tim Torrey sent via: mail

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11000 South 400 West, L.C., a Utah limited liability company organized and existing under the laws of the State of Utah, with its principal offices at Salt Lake City, County of Salt Lake, State of Utah, Grantor, hereby conveys and warrants to South Jordan City, a Utah municipal corporation, Grantee, of South Jordan City, County of Salt Lake, State of Utah, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the following described tract of land in Salt Lake County, State of Utah:

The Manager who signs this deed certifies that this deed and the transfer represented thereby was duly authorized by the members of the limited liability company.

1100 SOUTH 400 WEST, L.C., A UTAH  
LIMITED LIABILITY COMPANY

STATE OF \_\_\_\_\_ )  
:SS.  
COUNTY OF \_\_\_\_\_ )

sj\400west.wd

## EXHIBIT "A"

11000 South 400 West L.C.  
(Pegasus Development)

A parcel of land in fee for the purpose of constructing a roadway located in Salt Lake County, Utah, in the southwest quarter of Section 13, Township 3 South, Range 1 West, Salt Lake Base and Meridian, and being more particularly described according to the following courses and distances to wit:

Beginning on the Grantor's northerly property line at a point 1107.24 feet N.  $00^{\circ}36'46''$  E. along the section line and 1884.21 feet East from the southwest corner of Section 13, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and running thence S.  $84^{\circ}40'00''$  E. 141.58 feet along Grantor's northerly property line to Grantor's easterly property line; thence Southeasterly along the arc of a 353.00-foot radius nontangent curve to the left 40.00 feet along said easterly property line (Note: Chord to said curve bears S.  $45^{\circ}34'46''$  E. 39.98 feet); thence Southwesterly along the arc of a 400.00-foot nontangent curve to the left 231.60 feet along said easterly property line (Note: Chord to said curve bears S.  $24^{\circ}35'13''$  W. 228.38 feet); thence S.  $08^{\circ}00'00''$  W. 44.73 feet along said easterly property line; thence N.  $85^{\circ}54'53''$  W. 66.32 feet; thence Northerly along the arc of a 446.70-foot radius curve to the right 61.59 feet (Note: Chord to said curve bears N.  $08^{\circ}02'04''$  E. 61.55 feet) to a point of reverse curvature; thence Northerly along the arc of a 449.13-foot radius curve to the left 230.20 feet (Note: Chord to said curve bears N.  $02^{\circ}41'55''$  W. 227.69 feet) to the point of beginning. The above described parcel of land contains 27,243 square feet or 0.625 acre, more or less.

LAW OFFICES  
**KIRTON & McCONKIE**  
A PROFESSIONAL CORPORATION  
1800 EAGLE GATE TOWER  
60 EAST SOUTH TEMPLE  
SALT LAKE CITY, UTAH 84111-1004

TELEPHONE (801) 328-3600  
TELECOPIER (801) 321-4893

**FACSIMILE TRANSMISSION SHEET**

DATE: April 11, 1996

TIME: \_\_\_\_\_  
BILLING #: 5903-2

TO: Keith Snarr

FAX #: 254-3393

FROM: Gregory S Bell  
KIRTON & McCONKIE  
1800 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, UT 84111-1004  
(801) 328-3600

4 NUMBER OF PAGES INCLUDING COVER SHEET

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL OUR OFFICE AT  
(801) 328-3600 AS SOON AS POSSIBLE.

COMMENTS: Please see Deed Restriction and legal by Ralph Goff. I have sent the same  
things to Mike Mazuran for his review. Greg Bell.

This is a confidential communication and is not to be delivered or read by any other person other than the addressee. Facsimile transmission is not intended to waive the attorney-client privilege or any other privilege. If this transmission is received by anyone other than the addressee, the recipient is requested to call Kirton & McConkie collect at (801) 328-3600, and to immediately return this document to Kirton & McConkie by United States mail.

Kirton & McConkie guarantees return postage.

When recorded mail to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**DECLARATION OF RESTRICTION**  
[Wetlands - South Jordan City]

THIS DECLARATION OF RESTRICTION is made this \_\_\_\_ day of April, 1996 by the CITY OF SOUTH JORDAN ("City"), a municipal corporation of the State of Utah as follows:

A. City is the owner of real property described as follows (the "Property"):

Real property situate in Salt Lake County, State of Utah, and more particularly described as follows:

Beginning at the Northwest corner of the total tract, said point being West 2226.62 feet, and North 1216.22 feet from the South quarter corner of Section 13, Township 3 South, Range 1 West, Salt Lake Base and Meridian; and running thence South 75°19'05" East, 210.00 feet along the North boundary line; thence South 19°00'00" West, 599.89 feet; thence South 68°00'00" West, 131.21 feet; thence South 4°30'00" East, 190.81 feet; thence South 49°00'00" East, 211.91 feet; thence North 52°00'00" West, 150.00 feet; thence North 62°30'00" East, 200.00 feet; thence North 1°00'00" West, 190.00 feet; thence North 63°00'00" West, 59.41 feet; thence North 58°59'55" East, 80.00 feet; thence North 18°36'55" East, 586.70 feet to the point of beginning.

Contains: 4.1125 Acres

B. City is required to restrict the use of the Property pursuant to the requirements of the Corps of Engineers of the U.S. Department of the Army and wishes to effect such restriction by this Declaration.

NOW, THEREFORE, BE IT KNOWN to all men that City hereby declares as follows:

City hereby declares the Property to be restricted only to those uses and purposes which are permitted for "wetlands" pursuant to Section 404 of the Federal Clean Water Act. No development, improvement, alteration or use of the Property may be made which is inconsistent with such permitted uses and purposes.

This restriction shall be perpetual, shall run with the ground described as the Property, and shall constitute an equitable servitude upon the Property.

This restriction may not be amended, remitted or removed without the prior, written and recorded consent of the Corps of Engineers of the United States Department of the Army,

or its successor entity having jurisdiction over wetlands pursuant to the Federal Clean Water Act; provided, however, if the federal government shall ever cease to regulate or otherwise assert jurisdiction over wetlands, this restrictions may be amended, remitted or removed upon the written, recorded consent of the owner(s) of the Property.

CITY OF SOUTH JORDAN

By \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Recorder

STATE OF UTAH )  
 )  
 ) :ss  
COUNTY OF SALT LAKE )

On this \_\_\_\_ day of April, 1996, before me, a notary public, personally appeared \_\_\_\_\_, personally known to me to be the Mayor of South Jordan City, and \_\_\_\_\_, personally known to me to be the City Recorder of South Jordan City, both of whom acknowledged to me that they executed the foregoing document.

My Commission Expires:

\_\_\_\_\_  
Notary Public  
Residing at: \_\_\_\_\_

D:\SGSB\59032\WETLAND.DEC\041096



R  
G  
A

# RALPH GOFF & ASSOCIATES

\*\*\*\*\*

262-8733  
(FAX) 262-8531

consulting engineers

118 East Vine Street  
Murray, UT 84107

April 9, 1996

## LEGAL DESCRIPTION

GERALD ANDERSON  
WETLANDS MITIGATION AREA  
GILES PROPERTY (FAIRBOURN)

BEGINNING AT THE NORTH WEST CORNER OF THE TOTAL TRACT, SAID POINT BEING WEST 2226.62 FEET, AND NORTH 1216.22 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 13, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE S75°19'05"E, 210.00 FEET ALONG THE NORTH BOUNDARY LINE; THENCE S19°00'00"W, 599.89 FEET; THENCE S68°00'00"W, 131.21 FEET; THENCE S4°30'00"E, 190.81 FEET; THENCE S49°00'00"E, 211.91 FEET; THENCE N52°00'00"W, 150.00 FEET; THENCE N62°30'00"E, 200.00 FEET; THENCE N1°00'00"W, 190.00 FEET; THENCE N63°00'00"W, 59.41 FEET; THENCE N58°59'55"E, 80.00 FEET; THENCE N18°36'55"E, 586.70 FEET TO THE POINT OF BEGINNING.

CONTAINS: 4.1125 ACRES

SOUTH JORDAN CITY PLANNING COMMISSION  
11175 South Redwood Road  
South Jordan, Utah 84065

Attention Steve

REQUEST FOR RECOMMENDATION

Application Name STERLING VILLIAGE Number \_\_\_\_\_

For Property at 1100 SOUTH 400 WEST STREET Size 54.4718 ACRES

Proposal: PRELIMINARY SITE PLAN FOR AN APARTMENT COMPLEX WITH 880 UNITS IN  
THE R-M ZONE.

Submitted By: PEGASUS

In considering this application, the Planning Commission would appreciate receiving your observation and recommendation on the above proposal. Your prompt response will be greatly appreciated.

RECOMMENDATIONS:

*Recommend Approval Everything Looks Good.*

DATE: 2-14-96

Department: WATER DEPT

Name: Samuel

Title: WATER SUPERINTENDENT

County:

Date Requested

Flood Control \_\_\_\_\_  
Board of Health \_\_\_\_\_  
Fire Department \_\_\_\_\_  
City Engineer \_\_\_\_\_  
Police Chief \_\_\_\_\_  
Public Works \_\_\_\_\_

State Highway \_\_\_\_\_  
Sewer District \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Exhibit Attached:

Yes \_\_\_\_\_ No \_\_\_\_\_

SOUTH JORDAN CITY PLANNING COMMISSION  
11175 South Redwood Road  
South Jordan, Utah 84065

Pegasus File

Attention Jess

REQUEST FOR RECOMMENDATION

Application Name STERLING VILLAGE Number \_\_\_\_\_

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Submitted By: PEGASUS

In considering this application, the Planning Commission would appreciate receiving your observation and recommendation on the above proposal. Your prompt response will be greatly appreciated.

RECOMMENDATIONS:

① Turn radius to be no less than a 45' Radius to accommodate a ladder truck.

DATE: 2/8/96

Department: Fire

Name: Jess Burbidge

Title: Batt Chief / FM

Date Requested

County:

Flood Control \_\_\_\_\_  
Board of Health \_\_\_\_\_  
Fire Department \_\_\_\_\_  
City Engineer \_\_\_\_\_  
Police Chief \_\_\_\_\_  
Public Works \_\_\_\_\_

State Highway \_\_\_\_\_  
Sewer District \_\_\_\_\_

Exhibit Attached:

Yes \_\_\_\_\_ No \_\_\_\_\_

02/09/96 FRI 16:00 FAX 801 266 1871

EWP ENGINEERING

003

This is a ☐ Change of Zoning ☐ Conditional Use ☐ Board of Adjustment Application  
 Addendum sheets attached ☐ Yes ☐ No

Name and Telephone	PEGASUS DEVELOPMENT CO. (415) 570-7800	Application #	
Street	2400 CAMPUS DRIVE, SUITE 200	Receipt & Amount	
City, State, Zip	SAN MATEO, CA 94403	Zone	
Agent	ROBERT Q. ELDER	Date Received	
Name and Telephone	ECKOFF, WATSON AND PREATOR (801) 261-0090	Is Zoning Request:	
City, State, Zip	SALT LAKE CITY, UT 84124-1214	From	To

Legal Description/Property Address &amp; Block Number

11000 South 400 West

Total Area—Acres or Sq. Ft. 54.5 ACRES

## For Zoning or Conditional Use Only

X 1. What use is proposed?

X 2. In what way does the proposal recognize the City Master Plan?

X 3. What is the estimated development schedule?

## Board of Adjustment Only

A variance from the ordinance requirement is requested for the following:

- ☐ Side yard ☐ Front yard ☐ Rear yard ☐ Area ☐ Width ☐ Yard Coverage  
☐ Curb, Gutter, Sidewalk ☐ Lot Division ☐ Extending use 50' into adjoining zone  
☐ On-site Improvements ☐ Expansion of a non-conforming use or building ☐ Other

02/09/96 FRI 16:48 FAX 801 266 1671  
02/07/96 WED 08:30 FAX 801 266 1671EWP ENGINEERING  
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## Applicant's Affidavit

State of Utah )  
County of Salt Lake )  
South Jordan City )

I, (we) Robert Q. Elder, being duly sworn, depose and say that I, (we) am the owner or authorized agent of the owner of property involved in this application and that the foregoing statements and answers herein contained and the answers in the attached plans and other exhibits thoroughly, to the best of my (our) ability, present the argument in behalf of the application herewith requested and that the statements and information above referred to are in all respects true and correct to the best of my (our) knowledge and belief.

Signed Robert Q. Elder

Subscribed and sworn to before me this

13th day of February, 1996NOTARY PUBLIC  
MARILYN YOUNG  
1121 E. 3900 So. #C-100  
Salt Lake City, Utah 84124  
My Commission Expires  
March 8, 1997  
STATE OF UTAH

Notary Public Residing in Salt Lake County, Utah

My Commission Expires 3/8/97

## Agent Authorization

I, (we) 11000 South 400 West, L.C., a Utah limited liability company, the owner(s) of real property at 11000 South 400 West South Jordan, Utah, do hereby appoint Robert Q. Elder as my agent to represent me (us) with regard to this application affecting the above described real property, and do authorize Robert Q. Elder to appear on my behalf before any County Boards considering this application.

Dated this 8th day of February, 1996Alan K. Torday  
Owner's SignatureState of Utah )  
County of Salt Lake )  
South Jordan City )

On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, personally appeared before me \_\_\_\_\_, the signer(s) of the above instrument who duly acknowledged to me that executed the same.

Notary Public Residing at \_\_\_\_\_

My Commission Expires \_\_\_\_\_

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made and entered into as of the 30<sup>th</sup> day of November, 1995, by and between SOUTH JORDAN CITY, a municipal corporation of the State of Utah ("City"), and 11000 SOUTH 400 WEST, L.C., a Utah limited liability company ("Developer").

### RECITALS:

A. Developer owns approximately 54.56 acres of ~~ground~~ in City's municipal limits at approximately 11000 South 440 West. Developer or its predecessor has petitioned the City to amend the zoning ordinance for such property consistent with a proposal for not more than 880 units of multi-family residential apartments and condominiums (the "Project").

B. At its regular meeting held on November 14, 1995, the City Council of South Jordan City (the "City Council") approved such amended zoning ordinance, subject to various terms and conditions.

C. City and Developer are mutually desirous of setting forth their respective understandings and agreements with respect to the Project to assure that the Project described herein is developed and constructed in an aesthetically pleasing manner as provided herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Incorporation of Recitals. The Recitals are incorporated into this Agreement.
2. Purpose of Agreement. The purpose of this Agreement is to reduce to writing the respective understandings and agreement of the parties with regard to the general development guidelines for the Project, including all improvements to be located therein, to be developed within that certain area of the City as set forth in the General Plan of the City located between 10600 and 11400 South and the I-15 freeway and the Jordan River. It is the desire of the respective parties that the development of the Project proceed in such a manner as to benefit the residents of the City as well as the Developer. This Agreement contains certain requirements for design and development of the Project in addition to those contained in the ordinances, rules and regulations of the City governing the development of real property within the City.
3. Description of the Project. The Project shall be developed as a multi-unit residential planned unit development and is located within the C-FF zone of the City. The Project will be located on 54.56 acres depicted and described in the legal description attached hereto as Exhibit "A" and by this reference made a part hereof.

4. Site Plan. A Conceptual Master Site Plan for the entire Project is attached hereto as Exhibit "B" and by this reference is made a part hereof. Hereafter a Final Site Plan shall be submitted by the Developer for each phase of the Project for approval by the City in accordance with the Site Plan Review Ordinance of the City. To the extent that Preliminary and Final Site Plan elements are the same as corresponding elements of the Conceptual Master Site Plan attached as Exhibit "B", then Preliminary and Final Site Plan approvals will not be unreasonably withheld by the City. The Developer acknowledges that final landscaping plans, buffering plans, grading plans, lighting plans, construction plans and specifications remain subject to City approval as provided in City ordinances. All portions of the Project receiving Final Site Plan approval must be developed in strict accordance with the approved Final Site Plan for that phase. No amendments or modifications to the Final Site Plan for any phase shall be made by the Developer without the prior written approval of the City. The Conceptual Master Site Plan for the entire Project may be modified from time to time by the Developer with the approval of the Planning Commission. Notwithstanding the provisions contained in this Development Agreement, nothing herein shall be construed as granting Final Site Plan approval to the Developer for the Project, or any phase thereof, until Developer's application therefor has been made to the City and properly processed in accordance with the Site Plan Review Ordinance as contained in Chapter 22 of Title 12 of the City Zoning Ordinance.

5. Elevations. Preliminary building elevation drawings (both two story and three story), are attached hereto as Exhibit "C" and by this reference are made a part hereof (collectively the "Elevation Drawings"). The Project shall conform in all material respects to the Elevations Drawings approved by the City.

6. Development of the Project.

a. Development Phases. The Project will be developed in phases. Phasing of the Project shall take into account and be accomplished in order to ensure: continuity and orderly development of the Project, coordination in connection with the installation of infrastructure improvements, future utility capacity needs, availability of access to all portions of the Project, adequacy of utilities and related considerations. The essential features of each Phase, and the Schedule therefor shall be as follows:

(1) Phase I.

- (a) Construction of Entry Road per Paragraph 6.b.(8)(b).
- (b) Construction of Recreation Center near entry to Project.
- (c) Construction of at least 300 Units near the Recreation Center.

(d) Establishment of easements for storm drainage onto adjoining open space property to the west, and an access easement across the Project for maintenance of drainage facility and other improvements on the open space property.

(e) Payment of Impact Fees and Building Permit Fees (per Schedule attached as Exhibit "E") for the units included in Phase I shall be due at the time the first building permit is issued for the Phase I units.

(f) Completion of construction for all units in Phase I shall be within five (5) years from the date of this Agreement.

(2) Phase II.

(a) Phase II may be commenced at any time, whether or not Phase I has been completed, but Phase II shall be commenced not later than five (5) years from date of this Agreement.

(b) Phase II shall include construction of additional residential units sufficient to bring the total units for Phase I and Phase II to at least ~~600~~ <sup>590</sup> *Phase II changed from 285 to 290*

(c) Payment of Impact Fees and Building Permit Fees (per Schedule attached as Exhibit "E") for the units included in Phase II shall be due at the time the first building permit is issued for the Phase II units.

(d) Completion of construction for all units in Phase II shall be within eight (8) years from the date of this Agreement.

(3) Subsequent Phases.

(a) The remainder of the units authorized hereunder may be constructed in one or more phases, which subsequent phases may be commenced at any time, whether or not construction under Phases I and II has then been completed.

(b) All building permits for units in this Project shall be applied for and issued, and all Building Permit Fees and Impact Fees paid therefor, not later than nine and one-half (9 1/2) years after the date of this Agreement.

NOTE



b. Development of the Project. The Project shall be developed by Developer in accordance with all of the requirements contained herein.

(1) Compliance with City Ordinances and Development Standards. The Project shall be developed by Developer in accordance with the Ordinances, rules, regulations, policies and development standards of the City.

(2) Number of Units. The Project may include (at Developer's option), but shall not exceed, a total of 880 units. The configuration of such units shall be subject to Final Site Plan approval as contemplated under Paragraph 4 above.

(3) Building Height. All buildings within the Project shall not exceed three stories or 38 feet whichever is less, which may include of stacking of three separate units so long as they are less than 38 feet in height (to be measured from finish floor to the mid point of sloping roofs). Flat roofs shall not be permitted on the dwelling units.

(4) Common Walls. Units may have three walls in common.

(5) Minimum Size. The minimum size of units within the Project Phases for which Final Site Plan approval has been given (in the aggregate), shall be 650 square feet; provided:

(a) At least <sup>62</sup>~~60~~% of the total units shall be not less than 1,000 square feet; and

(b) At least 85% of all the units (in the aggregate) shall be not less than 850 square feet.

(6) Parking and Garage Requirements. All vehicles shall be parked only in designated parking areas in the Project and there shall be no parking of vehicles in the internal roadways in the Project. A garage shall be constructed for each unit contained within the Project and ~~60~~% of the garages shall be attached. The minimum off street parking shall be 1.8 cars per residential unit with adequate provision for ingress and egress.

(7) Open Space. If the Final Site Plan(s) for the various Phases of the Project submitted by the Developer differs materially from the Conceptual Master Site Plan attached hereto as Exhibit "B" with respect to permanent open space, then not less than 47% of the gross area of the Project (covered by the Final Site Plan approved for each Phase, in aggregate) shall be retained in permanent open space. The City's general PUD standards for open space shall be complied with. The City acknowledges that such 47% is the current best

o/c

estimate by Developer's landscape architect of the open space shown on the Conceptual Master Site Plan attached hereto. The City further agrees to accept substantial compliance by the Developer in meeting this standard.

(8) Streets and Infrastructure.

(a) 400 West. The City agrees to construct, or cause to be constructed, without cost to the Developer except for the fees described in paragraph 8 below, 400 West Street commencing at 10600 South Street and running southerly therefrom approximately 1,639 feet, thence easterly approximately 432 feet to the west right-of-way line of the railroad track. The final location of 400 West Street shall be determined by the City; provided that the City will provide Developer with access to the Entry Road and the Project without requiring extension of the Entry Road more than 100 feet beyond the length shown on the Conceptual Master Site Plan attached hereto, and without adverse impact on the Project or the Final Site Plan. As to the costs of extension of the Entry Road, the Developer will pay the extra construction costs and the City will pay all extra land acquisition costs for the extension of the Entry Road. Construction by the City shall include the roadbase, asphaltting, curb and gutter on both sides of the street, together with water main, sanitary sewer, and storm drain as provided in the plans and specifications to be prepared by the City for 400 West Street. 400 West Street shall be not less than 80 feet wide nor more than 106 feet wide. Construction of 400 West Street by the City (as provided in this subparagraph) shall be commenced not later than May 1, 1996 and shall be completed not later than September 1, 1996. If the City fails to perform any obligation under this subparagraph and such failure continues for a period of fifteen (15) days after written notice of such failure is given to the City by the Developer, or if the performance of such obligation would reasonably require more than fifteen (15) days, if the City fails to commence such performance within such fifteen (15) day period, or thereafter duly fails to diligently pursue such performance to completion, Developer may, on written notice to the City, perform such obligation instead of the City. In such event, the Developer shall be reimbursed for the reasonable costs of such performance by the City, within thirty (30) days after such performance and demand for payment. The Developer shall provide reasonable evidence of actual costs incurred in performing such obligation for the City.

(b) Entry Road. The Developer hereby agrees to construct, or cause to be constructed, without cost to the City, the entry road ("Entry Road") extending from 400 West southerly to the Project entry, including all curb, gutter and sidewalks on both sides of such Entry Road, together with sewer and storm drains and water mains as shown in the Final Site Plan. After completion and acceptance by the City, such Entry Road shall be dedicated to the City as a public road, including the median strip and its landscaping, and shall thereafter be maintained by the City.

(c) Internal Roadways Private. The roadways located on and within the Project which are not to be dedicated to the City shall be private and shall be maintained, including snow removal, by the owner of the Project.

(9) Project Recreational Facilities. The recreational facilities to be located on and within the Project shall be private and not for public use. Such recreational facilities shall include, but not be limited to, two swimming pools, two jacuzzies, one aerobics room, one weight room, five barbecue and picnic areas, one t.v. room, and a walkway for pedestrian access by Project residents to the 34 acre open space property.

(10) Utilities. All utility lines shall be placed underground in designated easements. Each contractor and Developer shall be responsible to know the whereabouts of all underground utilities. Protection of such utilities shall also be their responsibility. Prior to construction, contact must be made with "Blue Stakes" to identify underground utility lines. Developer agrees to install and dedicate to the City and/or the applicable utility entities, the utility easements necessary to serve the Project. Separate water meters will not be required for each residential unit; provided that the Declaration of Covenants, Conditions and Restrictions ("CCR's") for the condominium plat (if filed by Developer) treat commonly metered water costs as shared common area expenses to be paid by the Homeowners Association and assessed to the unit owners.

(11) Water System Connections. Developer shall connect the Project to the City water system. The City may charge impact fees and connection fees relative to such connection in accordance with Exhibit "E" attached hereto. The Developer acknowledges that the City's secondary water system is not presently available to the Project. The City will permit connection to the water system at two (2) locations (at 400 West and Entry Road, and at 11000 South on the west side of the railroad tracks). The City will provide the Project with adequate water (both as to water availability and transmission facilities to the two connection points) at the time of connection.

(12) Site Lighting. A consistent lighting plan and light design, including heights, light standard design and light intensity shall be established for the overall Project. Directional shielding shall be used to protect nearby residential areas to the south of the Project.

(13) Buffering and Fencing. Developer shall provide buffering and fencing for the Project on a phase-by-phase basis provided in the Specific Design Conditions attached hereto as Exhibit "D".

(14) Grading and Drainage. Drainage for the Project must follow current City requirements as determined by the City Engineer. Drainage shall not be allowed to flow upon adjoining properties unless an easement for such purpose has been granted by the owner of the adjoining property on which the water flows. The Final Site Plan with grading, drainage, and clearing plans shall be approved by the City Engineer before any such activities may begin. When the City accepts a dedication of the 34 acres of open space property adjoining the Project, the open space property will be subject to an easement at locations acceptable to the City in favor of the Project for storm drainage detention, and for construction and maintenance of improvements relating to such storm drainage function. If such easement is not established prior to the dedication, then the City will grant such easement upon request after the dedication. If the City requires the Developer to up-size any storm drainage line or facilities above the sizes required to serve the Project then the City shall promptly pay the increase in cost of materials due to such up-sizing.

(15) Access Easement. Developer shall grant to the City a perpetual 20 foot easement for access of construction and maintenance vehicles and equipment across the Project, for the limited purpose of constructing and maintaining the storm drainage detention pond and other improvements on the open space property.

(16) General Maintenance. An overall maintenance schedule shall be implemented by the owner of the Project in maintaining all buildings, detention basins, landscaping, fences, walls, drives, parking lots (including surfacing and striping), or other structures. The property shall be maintained in good and sufficient repair in a safe and aesthetically pleasing manner. Roads and pavement shall be kept true to line and grade and in good repair.

(17) Specific Design Conditions. The specific design conditions attached hereto as Exhibit "D" are hereby approved for the Project.

7. Construction Standards and Requirements.

a. Construction Standards. All construction shall be conducted and completed in accordance with ordinances, rules and regulations of the City. Developer shall provide City, without cost to the City, with "as built" drawings pursuant to the City's ordinances. All roadway improvements shall be installed in accordance with AASHTO and UDOT standards, as applicable, and the requirements of any governmental entity having jurisdiction over such improvements as well as applicable law.

b. Permits. Before commencement of construction or development of any phase of the work on or any improvement upon or relative to the Project, including off-site work, Developer shall, at its expense, obtain, or cause to be obtained

all permits which may be required by the City or any other governmental agency having jurisdiction over such phase of the work or improvement. The City shall cooperate with Developer in securing and issuing such permits.

c. Rights of Access. Representatives of the City shall have the reasonable right of access to the Project during the period of construction to inspect or observe the Project and any work thereon, or to conduct, at the City's expense, such soil, geologic, engineering, surveying, or other investigations as the City may desire, or as may be required by the City Engineer.

d. Local, State and Federal Laws. Developer shall construct, or cause to be constructed, all improvements on the Project in conformity with all applicable federal, state and local laws, rules and regulations.

e. Bonds. Developer shall not be required to post or deposit any completion bonds or other security for completion of construction or performance hereunder, EXCEPT with respect to the estimated costs of the Entry Road and the utilities installed therein.

8. City Fees.

a. Building Permit and Impact Fees. The Developer shall pay to the City all required impact and other fees for the Project and any phase thereof in a timely manner. The fee schedule of the City for the Project is attached hereto as Exhibit "E" and by this reference made a part hereof. As a condition to the issuance of any building permit for the Project, Developer shall pay to the City the total net amount due as impact fees and building permit fees identified in Exhibit "E", which shall be the only impact fees and building permit fees charged by the City for the full Project; provided that Developer need not pay any such impact fees or building permit fees until issuance of the building permit for the units to which such fees relate. Developer accepts the fees specified in Exhibit "E" and hereby agrees not to contest the same for any reason.

Developer shall pay all generally applicable charges including inspection fees and other normal charges for the Project. Except for the foregoing, the City shall not make any other charge in connection with the Project. Nothing contained herein shall limit the City's ability to levy general property taxes against the Project or to charge uniformly applicable fees for business licenses and other generally applicable charges in accordance with law.

b. Park Fees. The City acknowledges that the development of the Project will include construction of various private recreation facilities for use by the occupants of the Project, and that such use will decrease the burden which the Project would otherwise impose on City park and recreational facilities. For this purpose, the City hereby agrees that the parks improvement fee otherwise applicable to the units in

the Project will be deferred and reduced as follows: (i) the Phase I parks improvement fee will be deferred entirely until Phase II; (ii) the Phase II and Phase III parks improvement fees will be paid at the rate set forth in the attached Exhibit "E" as and when otherwise required hereunder; (iii) the Phase I parks improvement fee will be due when the Phase II parks improvement fee is due, but Developer will be credited with a deemed payment of \$166,320; and (iv) if all building permits for units in this Project are not applied for and issued not later than nine and one-half (9 1/2) years after the date of this Agreement, then the Phase I fee credit of \$166,320 will be due and payable in full within thirty (30) days after written demand from the City, and the City shall have a lien against the Project for such payment.

c. Building Permit Fee Calculation. For purposes of calculating the Building Permit fees hereunder, such fees shall be based on an evaluation schedule as published in the latest edition of the International Conference of Building Officials Building Standards.

9. Development Regulation/Vesting. This Agreement shall have a term of ten (10) years from the date of the issuance of the first building permit in connection with the Project. During the term of this Agreement, Developer shall have the right to develop the Project pursuant to this Agreement, the Final Site Plan and the Elevation Drawings, and no change, amendment or modification in city procedure, impact fees, connection fees, design criteria, zoning, planning and land use ordinances or building codes shall be enforceable against the Project or against Developer in connection with the Project.

The expression of Developer's contractual rights under this Agreement shall in no manner operate as a waiver or relinquishment of any of Developer's rights at law or in equity pertaining to the Project, the Final Site Plan, the Elevation Drawings, or any permits issued in connection therewith.

10. Moratoria. The parties hereby acknowledge and agree that Developer may build the improvements on the Project in phases, and no moratorium, or future ordinance, resolution or other land use rule or regulation or limitation on the conditioning, rate, timing or sequencing of the development of the Project or any portion thereof shall apply to or govern the development of the Project during the term hereof, whether affecting parcel or subdivision or condominium maps, building permits, occupancy permits or other entitlement to use issued or granted by the City, except as otherwise provided in this Agreement, and except for any ordinance, resolution or regulation provided in this Agreement, and except for any ordinance, resolution, or regulation enacted by the City after the date of this Agreement as may be necessary to: (i) comply with any state or federal laws or regulations, provided that if any such state or federal law or regulation prevents or precludes compliance with any provision of this Agreement, such affected provisions shall be modified as may be necessary to meet the minimum requirements of such state or federal law or regulation; (ii) comply with any resolutions or ordinances of any other governmental authority having a material bearing on the City's ability to provide services to the Project or otherwise comply with its obligations under

this Agreement, provided that if any such resolution or ordinance prevents or precludes compliance with any provision of this Agreement, such affected provisions shall be modified as may be necessary to meet the minimum requirements of such resolution or ordinance; or (iii) alleviate or otherwise contain a legitimate, bona fide harmful and noxious use of the Project in which event any ordinance, rule or regulation to be imposed in an effort to contain or alleviate such harmful and noxious use shall be the most minimal and the least intrusive alternative possible and may be imposed only after public hearing and comment and shall not, in any event, be imposed arbitrarily. In the event of any such moratorium, future ordinance, resolution or rule or regulation, unless taken by the City as provided under the three exceptions contained in the preceding sentence, Developer shall continue to be entitled to apply for and receive approvals for the implementation of the Final Site Plan and the Elevation Drawings in accordance with the rules, regulations and official policies applicable to and governing the development of the Project existing and in force as of the date of this Agreement.

11. Amendment. The City and Developer acknowledge that amendments to the Final Site Plan and the Elevation Drawings may be necessary from time to time. If and when the parties find that minor changes or adjustments are necessary or appropriate, they shall effectuate such changes or adjustment through administrative amendments approved by the City's Community Development Director and/or Building Official, without referral to the Planning Commission or the Council. Changes and adjustments in major elements of the Final Site Plan (which affect the overall concept and appearance of the Project), such as location of buildings, location and width of roadways, major amenities, fencing and buffers along the Entry Road and along the south boundary of the Project (excluding the Project interior), and overall architectural style shall be subject to approval by the City Council after receiving the recommendation of the Planning Commission. The parties shall cooperate in good faith to agree upon, and to process, any administrative or substantive amendments to the Final Site Plan.

12. City Decisions. City agrees to respond to Developer requests for amendment to the Final Site Plan and the Elevation Drawings, or to requests from the Developer for City action pertaining to the Project, in a prompt and timely manner.

13. Termination.

a. Construction of the improvements contemplated by approved Final Site Plan for the entire Project must be completed no later than ten (10) years from the date of the issuance of the first building permit in connection with the Project. In the event the Developer fails to do so, or in the event the Developer fails to complete the various phases of the Project as contemplated by Paragraph 6 above (including commencement of construction and payment of fees), then the City shall give written notice of such failure to Developer, specifying such failures and giving notice that Developer's continued failure without cure for four (4) additional months (except for a failure to pay, in which case the cure period shall be one (1) month) may result in termination of this Agreement, upon written notice by the City, at its option.

b. In addition to the foregoing, in the event of any failure by the Developer to comply with its obligations hereunder, or with applicable City ordinances, the City shall have the right to pursue normal enforcement procedures permitted under its ordinances, and shall have all remedies otherwise available at law or in equity, including damages for breach of contract and injunctive relief.

c. Developer agrees to respond to City requests for information pertaining to the Project in a prompt and timely manner.

d. This Agreement shall terminate automatically upon completion of construction of the Project, as evidenced by a Certificate of Occupancy for all units for all Phases of the Project.

#### 14. General Provisions.

##### a. Assignment.

(1) Assignability. Developer shall not assign this Agreement, or any rights or interests herein, without the prior written consent of City. Nevertheless, City hereby consents to the assignment of this Agreement and all rights and benefits hereunder or relating to this Agreement to any entity as to which a majority of the equity interests are held either by Sanford Diller, and/or Sanford N. Diller and Helen P. Diller, Trustees of the D.N.S. Trust and/or Pegasus Development. City hereby consents to Developer granting security interests in and collaterally assigning its rights hereunder in connection with any financing of the Project, and to any such lender realizing upon its collateral (including the rights granted Developer hereunder) in a foreclosure, deed in lieu conveyance or other proceeding in enforcing its rights under its security documents.

(2) Exceptions to General Prohibition. Nothing contained herein shall prohibit Developer from selling or leasing residential apartments or condominiums in the ordinary course of business of operating the Project.

(3) Qualifications of Transferee; Assumption. Except as expressly provided in this Agreement, any proposed assignee of this Agreement shall have the qualifications and financial responsibility necessary and adequate, as reasonably required by the City, to fulfill the obligations undertaken in this Agreement by Developer. Any such proposed assignee, by instrument in writing satisfactory to City, for itself and its successors and assigns, and for the benefit of the City, shall expressly assume all of the obligations of Developer under this Agreement with respect to the Project (or any portion thereof), and shall agree to be subject to all the conditions and restrictions to which Developer is subject with respect to the Project (or any part thereof). Such assignments shall be



submitted to the City for review as to the consistency with this Agreement of such instruments and other legal documents. After such complete submittal, City may approve or disapprove such proposed assignee within thirty (30) days. If the proposed assignee is disapproved, City shall set forth the reasons for such disapproval in its notice. If City approves any such assignment, Developer shall be released from its obligation hereunder for that portion of the Project for which assignment is approved.

b. Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the stated rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights and/or remedies for the same default or any other default by the other party.

c. Notices, Demands and Communications Between the Parties. All notices, requests and demands required to be given hereunder shall be in writing and shall be deemed to have been duly given upon the date of service, if served personally upon the party for whom intended, or, if mailed by certified mail, return receipt requested, postage prepaid, to such party at its address as shown below with an additional copy sent by facsimile, three (3) business days after such mailing, or at such address as otherwise hereafter designated by such party in writing.

To Developer:

11000 South 400 West, L.C., a Utah limited liability company  
Pegasus Development Co.  
2600 Campus Drive, Suite 200  
San Mateo, CA 94403  
Attn: Sanford N. Diller  
Attn: Billy Reed  
Fax: (415) 349-3204

with copy to:

ALLEN NELSON RASMUSSEN & CHRISTENSEN, P.C.  
215 South State Street, Suite 900  
Salt Lake City, Utah 84111  
Attn: Bruce J. Nelson

To City:

City of South Jordan  
11175 South Redwood Road  
South Jordan, Utah 84095  
Attn: City Administrator  
Fax: 254-3393

Any party may change its address for notice under this Agreement by written notice to the other party in accordance with this Paragraph.

d. Non-liability of City Officials and Employees. No officer, representative, agent or employee of the City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by City, of for any amount which may become due to Developer or its successors or for any obligation under the terms of this Agreement.

e. Attorneys' Fees. In the event of any lawsuit between the parties hereto arising out of or relating to this Agreement, or any of the documents provided for herein, the prevailing party or parties shall be entitled to recover reasonable attorney's fees and costs as determined by the Court.

f. Enforced Delay; Extension of Time of Performance. Performance by either party hereunder, with respect to items of construction and development required hereunder, shall not be deemed to be in default where delays are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions or priority, unusually severe weather, acts of the other party, acts or the failure to act of any public or governmental agency or entity (other than acts or failure to act of City which shall not excuse performance by the City), or any other causes beyond the control or without the fault of the party claiming the right to an extension of time to perform. Any extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause.

g. Approvals by City and Developer. Wherever this Agreement requires the City and the Developer to approve, review or consent to any document, plan, proposal, specification, drawing or other matter, such approval, review or consent shall not be unreasonably withheld or delayed.

h. No Third Party Rights. The obligations of Developer set forth in this Agreement shall not create any rights in or obligations to any persons or parties other than the City. The City alone shall be entitled to enforce or waive any provision of this Agreement running in favor of City.

i. Entire Agreement, Waivers and Amendments.

(1) Duplicate Originals. This Agreement is executed in four (4) duplicate originals each of which is deemed to be an original. This Agreement also includes the above-mentioned Exhibits and constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof. All exhibits which are attached hereto and schedules referred to herein are hereby incorporated herein as though set forth herein at length.

(2) Integration. This Agreement, together with the exhibits hereto, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all prior negotiations, representations, promises or previous agreements between the parties with respect to all or any part of the subject matter(s) hereof.

(3) Waivers/Amendments. All waivers of the provisions of this Agreement must be in a writing signed by the authorized officers of the City or Developer. Any amendments hereto must be in writing and signed by the authorized representatives of City and Developer.

(4) Further Documentation. This Agreement is entered into by both parties with the recognition and anticipation that subsequent agreements implementing and carrying out the provision of this Agreement may be necessary. The parties hereby agree to execute and deliver such additional documents and to take further action as may become necessary or desirable to fully carry out the provisions and intent of this Agreement.

(5) Headings. The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.

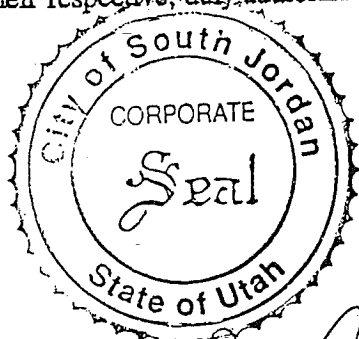
j. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, including any other municipality which may, by subsequent annexation, acquire any jurisdiction over any portion of the Project. The obligations of the Developer hereunder shall be conditioned upon closing of Developer's intended acquisition of the Project from Anderson Development Co.

k. Severability. If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be void, voidable or unenforceable, such void, voidable or unenforceable term or provision shall not affect any other term or provision of this Agreement.

1. Captions. The article and paragraph headings contained in this Agreement are for purposes of reference only and shall not limit, expand or otherwise affect the construction of any provisions hereof.

m. Governing Law. This Agreement and all matters relating hereto shall be governed by, construed and interpreted in accordance with the laws of the State of Utah.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first hereinabove written.



CITY:  
SOUTH JORDAN CITY

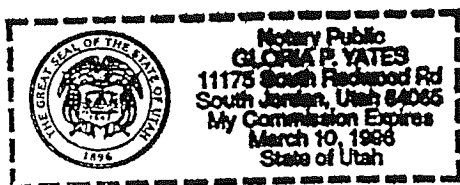
By: Theron B. Hutchings  
Mayor

ATTEST:

San-Manuel  
City Recorder

STATE OF UTAH )  
COUNTY OF SALT LAKE ) :ss

The foregoing instrument was acknowledged before me this 30 day of November, 1995, by Theron B. Hutchings, the Mayor of South Jordan City, County of Utah, State of Utah.



Gloria P. Yates  
NOTARY PUBLIC  
Residing at: South Jordan, Ut.  
My Commission Expires: 3-10-98

[SEAL]

DEVELOPER:

11000 SOUTH 400 WEST, L.C., a Utah  
limited liability company

By: *Sanford N. Diller*

Sanford N. Diller, Manager

STATE OF California )  
COUNTY OF San Mateo ) :ss

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of November, 1995, for and on behalf of 11000 South 400 West, L.C., a Utah limited liability company by Sanford N. Diller, Manager.



*Arsho Avetian*

NOTARY PUBLIC

Residing at:

My Commission Expires:

[SEAL]

Exhibit A

Legal Description


Beginning at a point North, 39.746 feet and East, 911.23 feet from the Southwest Corner of Section 13, Township 3 South, Range 1 West, Salt Lake Base and Meridian; Running thence S03°36'28"W, 214.554 feet; thence S75°12'05"E, 147.81 feet; thence S03°36'28"W, 19.28 feet; thence S02°34'30"W, 392.12 feet; thence S02°14'35"W, 235.32 feet; thence S07°17'03"W, 291.40 feet; thence S45°00'00"E, 44.245 feet; thence S07°17'03"W, 60.717 feet; thence South 74.381 feet; thence N89°29'00"E, 130.142 feet; thence South 30.00 feet; thence N89°29'00"E, 598.457 feet; thence S01°16'56"E, 153.050 feet; thence N89°59'45"E, 36.87 feet; thence North, 5.81 feet; thence 89°48'53"E, 352.27 feet; thence N05°18'15"E, 1500.984 feet; thence S89°41'55"W, 520.00 feet; thence N00°18'05"W, 92.119 feet; thence Northeasterly, 238.249 feet along the arc of a 500.00 foot radius curve to the right (Note: Chord bears N13°20'57"E, 236.002 feet); thence N27°00'00"E, 154.328 feet; thence Northerly, 316.69 feet along the arc of a 955.00 foot radius curve to the left (Note: Chord bears N17°30'00"E, 315.241 feet); thence N08°00'00"E, 90.188 feet; thence Northeasterly, 231.599 feet along the arc of a 400.00 foot radius curve to the right (Note: Chord bears N24°35'13"E, 228.378 feet); thence Northwesterly 40.00 feet along the arc of a 353.00 foot radius curve to the right (Note: Chord bears N45°34'46"W, 39.979 feet); thence N84°40'00"W, 571.197 feet; thence S08°06'05"E, 204.829 feet; thence S10°44'55"W, 575.43 feet; thence N82°07'32"W, 485.319 feet; thence S00°18'05"E, 405.734 feet to the point of beginning.

Exhibit D


Specific Design Conditions

The following Specific Design Conditions reference the Project. For purposes of the Development Agreement and design guidelines, the term "Developer" refers to all of the current or future owners of the Project.

The Project shall be developed under the following design conditions and specifications:

1. BUILDING SEPARATION AND SIDEYARD RESTRICTIONS: No buildings shall be closer than fourteen (14) feet as measured from exterior building wall to exterior building wall. *check revised drawings OK* 

2. INTERIOR ROADWAYS: Interior roadways in the Project shall have driving lanes of no less than ten (10) feet wide. Location of any such interior roadways shall be at the sole discretion and design of the Developer. No traffic impact study shall be required by the City in connection with the development of the interior roadways of the Project.

3. LANDSCAPING/BUFFERING: Landscaping shall comply with the Final Site Plan requirements and the standards set forth in the City's ordinances. The plans and specifications submitted for final approval shall be stamped by a registered and licensed landscape architect. Preliminary plans for buffering for the full Project will be submitted for review with Phase I. No structures shall be constructed on the Project within 400 feet of the south boundary line without construction of a sound barrier wall along or near such boundary. *need 6-7' wall brick, concrete panel, block or other to match RR sound wall* 

4. BUILDING MATERIALS/COLORS/FINISHES: All construction shall meet minimum uniform fire and building code standards in effect at the time a building permit is sought for the particular improvements which are the subject of such building permit(s). Exterior building materials which are a combination of brick veneer and stucco, consistent with the preliminary building elevations attached hereto as Exhibit "C" are acceptable. Brick veneer in natural earthtones (beige, brown, gray, etc.) is acceptable. Accent colors around windows, door frames, etc. are acceptable in earthtones, or white and forest green shades. Colors for roofs shall be in the discretion of the Developer. Roofs shall be composition shingle. No aluminum siding shall be used on the buildings. Any metal finishes will be non-reflective.

5. CONDOMINIUMS: The Developer may (at its option) file a Condominium Map for the Project. The CCR's required in connection with the Condominium Map (if any) shall provide that the Homeowners Association need not be legally filed with the State of Utah until just prior to sales of condominium units. Any condominiums developed in the Project shall conform to the minimum requirements contained in state law existing as of the time the Condominium Map is submitted for

approval. Requirements of size, building materials, parking, etc. shall be identical to those conditions set forth above.

6. SIGNAGE: Two (2) monument signs (not exceeding 10' wide and 6' high) at 400 West and Entry Road are acceptable. A temporary sign (not exceeding 10' wide and 6' high) may be installed by the Developer at the 10600 South 400 West corner (subject to landowners' approval) for a period until a permanent sign at that location is installed pursuant to approval of the City. The City is preparing a coordinated signage plan for the Project and nearby commercial property. Such plan will include a monument sign at 10600 South 400 West, and the Developer will be allowed signage on such monument.

To the extent that any design conditions and specifications listed above, or the Final Site Plan, conflict with any City zoning ordinance, code, or policy, a variance to such zoning ordinance, code, or policy is deemed approved for the Project subject to this Exhibit D so as to allow contemplated development according to the design conditions and specifications set forth above.



Exhibit "E"

City Fees

Impact Fees

Streets Impact Fee: \$700/unit

City Building and Facilities: \$350/unit

Parks Improvement: \$700/unit

Parkway Landscaping: \$300/unit

Water Storage: \$200/unit

Construction Water: All Permits: \$64.00

Water Connection Fee<sup>1</sup>:

3/4 Inch Connection \$1,500.00<sup>2</sup>

1 Inch Connection \$1,750.00<sup>2</sup>

2 Inch Connection As Per Water Conservancy District Fee  
Schedule<sup>3</sup>

4 Inch Connection As Per Water Conservancy District Fee  
Schedule<sup>3</sup>

Flood Control Fee: \$2,300/Acre

Building Permit Fees:

(To be calculated pursuant to standard City procedures as required by the foregoing  
Development Agreement [Paragraph 8])

Sprinkler Plan Fee:

Plan review fee for fire sprinkler protection systems. Total fee not to exceed \$400.

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<sup>1</sup>The Developer may, at its option, pay all or any part of the Water Connection Fees by conveyance of East Jordan Canal Company water shares to the City, at fair market value.

<sup>2</sup>Including installation by the City at its cost.

<sup>3</sup>To be determined by negotiation between Developer and Salt Lake Water Conservancy District. City agrees to pass through District fees without premium and without discount. Developer shall have the right to dispute and negotiate applicable fees and connection charges with the District at its expense.

## POSSIBLE SCHEDULE FOR APPROVAL OF THE PEGASUS HOUSING PROJECT

### Schedule of Meetings for South Jordan Site Plan Approval Process

#### 1. Required Approvals

- \* Development Review Committee ( Every Thursday, 10 AM)
- \* Planning Commission Meetings - (2nd and 4th Wednesday)
  - March 27
  - April 10 and 24
  - May 8 and 22
  - June 12 and 26
- \* City Council Meetings (1st and 3rd Tuesday)
  - March 19
  - April 2 and 16
  - May 7 and 21
  - June 4 and 18

#### 2. Standard Procedures

Site plan approval requires notification to those residents within 300 feet at least 10 days prior to the public meeting with the Planning Commission and City Council.

The following schedule assumes no delays due to changes by recommending and approving authorities:

#### **PRELIMINARY SITE PLAN APPROVAL**

##### **March**

15 Notification to adjacent residents for PC meeting on the 27th and Council meeting on April 2.

27 Planning Commission review and approval.

##### **April**

2 City Council deliberation and approval

#### **FINAL SITE PLAN APPROVAL (Phase I)**

##### **April**

- 5      Submit Phase I application for DRC review
- 11     DRC Review completed with letter to applicant
- 15     Revised Plans with changes resubmitted.
- 15     Notification to residents
- 24     Planning Commission review and approval

**May**

- 10     Notification to residents
- 21     City Council Review and approval

**Note: Grading permit can be issued to applicant upon submitting a complete application with City Engineer requirements followed by City Engineer review and approval.**